

Kantian Constitutivism: Problems and Prospects

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Thesis abstract

Kantian constitutivists argue that normativity can be derived from particular elements of what is constitutive of our nature. In “Agency Shmagency: Why Normativity Won’t Come From What Is Constitutive of Action”, David Enoch argues that constitutivism cannot serve as a foundation for objective normativity. The first section of this thesis analyses and develops the constitutivist David Velleman’s response to this challenge. The second section explores the way in which the epistemic and metaethical claims made by the Kantian constitutivist, Christine Korsgaard, can be used to reject Enoch’s claim. This exploration of constitutivism reveals that a key Kantian claim utilised by the constitutivist approach allows for the development of a scalar deontology. Hence, the third section of the thesis explains a formulation of the categorical imperative where our obligation to be coherent is something that we pursue more or less successfully, rather than a task at which we succeed or fail.

Enoch (2006) argues that the constitutivist approach cannot deliver objective normativity by deriving normativity from elements of our constitution because how we are constituted is contingent. The problem, according to Enoch, is that any norms derived from agents’ constitutions require a justification that cannot be derived from an appeal to our constitution: being constituted in a particular way does not entail that one ought to endorse being constituted in this way. To reply to Enoch, Velleman needs to deviate significantly from constitutivism’s Kantian foundations, and Korsgaard has not responded to Enoch’s critique. I provide two replies to Enoch’s critique. The first is consistent with key elements of Velleman’s constitutivism but, unlike Velleman’s response, does not deviate from constitutivism’s Kantian foundations. The second reply to Enoch’s shmagency problem is derived from Korsgaard’s solution to a different criticism of Kantian constitutivism. These two replies demonstrate that Kantian constitutivism can overcome Enoch’s critique by appealing to the epistemic and metaphysical roots of the Kantian tradition. In both replies, I demonstrate that Enoch’s argument appeals to an understanding of objectivity that is not shared by the Kantian constitutivists he critiques. In the Kantian tradition, transcendental arguments are utilised to derive objective claims about normativity from necessary elements of our cognitive faculties. By identifying that Enoch’s critique is a dispute with the Kantian tradition rather than the constitutivist approach as such, I demonstrate that Enoch fails to introduce new problems for Kantian constitutivists.

Examining the role of Kantian claims regarding the nature of autonomy and the source of normativity in Kantian constitutivism, reveals that one of the key Kantian claims utilised by constitutivists allows for the development of a scalar deontology: scalar deontology is a formulation of the categorical imperative which explains that our obligation to constitute ourselves coherently is an aim which we always ought to pursue and something that we pursue more or less successfully. Kantian moral theory argues that our autonomy is derived from our ability to control our own actions through the use of our rational faculties. According to the Kantian argument we have control over our own actions when our will is the cause of our actions. Kantian constitutivists develop this argument by explaining that the rational constitution of our will obligates us to act coherently. This obligation to make decisions that are coherent with the demands of our rational faculties is our obligation to constitute ourselves coherently.

Scalar deontology develops this line of argument further by identifying that our obligation to constitute ourselves coherently is an ongoing aim that governs all of the moral decisions we make and explaining that this ongoing obligation to constitute ourselves coherently is not something that we are strictly successful or unsuccessful at achieving but something that we are in the process of pursuing more or less successfully. From the position of a subject that is exercising their autonomy, this obligation to constitute oneself coherently is something that the subject is in the process of pursuing and, thus, from the perspective on an agent engaged in its pursuit, it is an obligation that we are pursuing more or less successfully: it is a scalar obligation.

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Section 0: Introduction

0.1 Thesis overview

Kantian constitutivism argues that normativity, what we are obligated to do and why we have such obligations, can be derived from particular elements of what is constitutive of our nature. Christine Korsgaard (1996b) argues in *The Sources of Normativity* that our obligation to obey the categorical imperative is derived, necessarily, from the reflective structure of our own mind (pp. 92-94, 97-98, 103-105). She argues that deciding what to do requires using our faculty of reflection and the laws governing that faculty obligate us to be coherent. Therefore, because of what is constitutive of our faculty of reflection, we are obligated to use that faculty to become coherent and, in order to do that, we must obey the categorical imperative. David Velleman (2004) makes a similar claim in “Précis of the Possibility of Practical Reason” where he summarises the aim of action as pursuing knowledge about oneself (p. 236). Velleman means that when we try to decide what action to take, we do so by trying to make ourselves intelligible to ourselves. We do this by being motivated by aims that are, when considered in the context of our other aims and motivations, understandable to ourselves in a sense that makes ourselves coherent.¹ David Enoch (2006) critiques this approach in “Agency Shmagency: why Normativity Won’t Come From What is Constitutive of Action” by arguing that identifying how we are constituted does not entail an obligation to endorse our constitution (pp. 177-180). His point is that even if Velleman and Korsgaard are correct about our constitution, and what it entails, they still have not established that we ought to endorse what follows from our constitution. We might, for example, choose to endorse a hypothetical alternative constitution (which Enoch presents as a ‘shmagent’) and, regardless of what constitution we endorse (our own or some alternative), whatever reason there is to endorse any particular constitution will not itself be derived from that constitution because that would be arbitrary and circular. The reason to endorse our constitution cannot be simply because it is our constitution, because that would be arbitrary: any creature constituted in any way could provide the same argument for their own constitution.

The solution to Enoch’s critique, the shmagency problem, is to appeal to the epistemic and metaphysical roots of the Kantian tradition. Enoch argues that normativity derived from our constitution cannot be objective because any norm derived from such a source is contingent on the particulars of our constitution; our constitution could hypothetically have been otherwise, so any normative claims derived from the particulars of our constitution could have been otherwise. The Kantian reply to this point is to explain that the elements of our constitution from which morality is derived are not the elements that could be otherwise. Enoch’s critique does not threaten the objectivity of the normativity established by Kantian constitutivists if normativity is derived from elements of our constitution that are not contingent. Karl Schafer (2019) argues for a related point in “Kant: Constitutivism as Capacities-First Philosophy” where he posits that Kantian philosophy in general is constitutivist in the sense that it derives claims about what exists and the nature of knowledge from features of our rational faculties (p. 4). Carl Posy (2010) explains in “Man is the measure: Kantian Thoughts on the Unities of Self and World” that what makes an action coherent, rational, moral, or unified, must be measured with reference to

¹ This point is also present in his earlier work *The Possibility of Practical Reason* (1989) (pp. 719-722), but clarified in his later work *How We Get Along* (2009) (pp. 26-28, 80-85)

elements of ourselves because it is only from this perspective that the role of practical reason can be rendered coherent (pp. 124, 134, 140-142). My point, and the solution to the shmagency problem for Kantian constitutivism, is that transcendental arguments work by deriving the objectivity of claims from non-contingent elements of what we provide to the construction of our experience of the world and, therefore, Kantian constitutivism is not an appropriate target for Enoch's critique of the constitutivist approach.

Providing this solution to the shmagency problem involved exploring the relationship between Kantian constitutivism and autonomy, and this identifies the scope for the development of a scalar deontology. Developing this Kantian reply to the shmagency problem required examining the source of normativity put forward by Velleman and Korsgaard. In both cases, as in Kantian moral theory, our obligation to ourselves (normativity) is derived from our autonomy. By "autonomy" I mean our control over our own actions and, therefore, our freedom. Velleman (2000) argues for a type of epistemic freedom in *The Possibility of Practical Reason* where he explains that freedom has similar metaphysical qualities to colour in the sense that it accurately describes the world from the position of a subject that is experiencing it (pp. 32-44). He describes this as an "epistemic freedom" because it justifies claims about our control over our own actions provided those claims are understood as pertaining to the relevant frame of reference. Korsgaard (1996a) makes a similar point in *Creating the Kingdom of Ends* where she argues that understanding the world requires identifying the sense in which a subject has control over their own actions and the sense in which the subject's actions are determined by the relevant causal forces (p. 205). She explains that the agent is a causal force, a will, and that freedom exists in the sense that it is the identification of the self with that force. Both Velleman and Korsgaard are developing the point made by Immanuel Kant (1785/2011) in *Groundwork of the Metaphysics of Morals* where he argues that intelligent beings must regard themselves as simultaneously belonging to the world of sense and the world of understanding (4:452). The idea, utilised by Kant, Korsgaard, and Velleman, is that understanding our position as subjects requires understanding our control over our own actions (the sense in which we belong to the world of understanding) even though our actions can also be explained by reference to the relevant causal forces (the way in which we belong to the world of sense).

This claim that the source of normativity requires understanding autonomy from the position of the subject, as it identifies with the control it has over its own actions, allows for the development of a scalar formulation of the categorical imperative. Kantian constitutivism argues that our obligation to ourselves, our duty, is to constitute ourselves coherently (or, as Velleman puts it, intelligibly). From the position of a subject actively involved in that project of self-constitution the pursuit of coherence of the self is an ongoing project, not something that is completed or failed. Rather, it is best understood from the position of the subject that is in the ongoing pursuit of constituting themselves and, from this position, the contributing decisions that make up this project provide a scalar contribution to the aims of the pursuit. My argument for scalar deontology is that the categorical imperative is scalar in the sense that our constitution of ourselves as coherent, our pursuit of unity, is an ongoing aim we pursue to a greater or lesser

degree of success and our obligation to ourselves, to be coherent, is fulfilled to the extent that we are succeeding in that pursuit.

0.2 Constitutivism

Constitutivism is the metanormative attempt to derive normativity from elements of the subject. This is accomplished by determining what one ought to do by appealing to the constitution of agency and action. The idea is that the norms that govern our behaviour can be derived from an examination of what we are. Establishing this claim is undertaken by inviting a subject to undertake an examination of their own nature and then explaining that what they find in such an examination is not merely an explanation of what they are but also prescriptions about what they should do. This constitutivist approach to establishing the foundations of normativity can be explained by an analogy to the normativity of the objects that makeup the world around us: to determine what an object should do, or what makes an object a good object of its kind, you first undertake an analysis of what is constitutive of the object in question. For example, a good backpack is one that is capable of safely carrying goods because its ability to perform this function is what makes it a backpack. This function is constitutive of being a backpack and, therefore, the normativity of being a backpack is derived from its ability to perform it. Similarly, the normativity of what I should do is determined by what is constitutive of being what I am and the norms that govern my life are founded in (derived from) whatever it is that makes me count as the type of thing that I am.

In “Agency Shmagency: why Normativity Won’t Come From What is Constitutive of Action” Enoch (2006) explains constitutivism as the attempt to derive the normativity that governs us from those elements of our constitution that make us the type of thing that we are:

“The intuitive idea can be put, I think, rather simply: In order to know what it takes for a car to be a good car, we need to understand what cars are, what their constitutive functions are, and so on. A good car is just a car that is good *as a car*, good, that is, in measuring up to the standards a commitment to which is built into the very classification of an object as a car. Analogously, then, perhaps in order to know which actions are good (or right, or reason supported, or rational, or whatever), all we need is a better understanding of what actions are, or perhaps of what it is to be an agent, someone who performs actions. Perhaps the normative standards relevant for actions will fall out of an understanding of what is constitutive of action just as the normative standards relevant for cars fall out of an understanding of what is constitutive of cars.” (p. 170).

If this approach is successful, understanding what is constitutive of agency would both explain the source of normativity and how we are to derive normative content from that source.

Constitutivism is an approach to solving the metaethical and epistemological problem of normativity, by ‘problem of normativity’ I mean the difficulties associated with explaining in what sense, if any, normativity exists, how we are able to know things about normativity, and what, if anything, makes normativity objective. Constitutivism and the motivations that give rise to the constitutivist approach are inexorably linked. Constitutivism is a method of explaining why normativity exists and how we can access knowledge about it. To clarify, this does not entail that constitutivists are necessarily moral realists, although they can be: constitutivism provides an explanation of why we encounter normativity during our reflection and decision making process and, in this sense, explains its existence (this may, or may not, involve further claims about

realism and the nature of this existence). It is, in this sense, that constitutivism is an attempt to provide the foundations of morality. Matthew Silverstien (2015) explains in “The Shmagency Question” that the constitutivist strategy places what is constitutive of agency (what makes one count as an agent) in the role of the foundation of moral theory (pp. 1127-1129). Constitutivism provides a foundation for morality by attempting to answer the epistemic and metaphysical questions related to the nature of normativity and how we access knowledge about it.

In “Shmagency Revisited” David Enoch (2011) describes constitutivism as motivated by the desire to provide an answer to those skeptical about the possibility of answering moral questions by providing an explanation of the source of morality that removes a troubling element of mystery from the notion of morality as such. As Enoch (2011) explains:

“The promises of constitutivism are significant. Perhaps chief among them are the hope of providing some kind of answer to the skeptic about morality or, perhaps, practical reason, and the hope of securing for practical reason a kind of objectivity that is consistent with its practical, motivationally engaged nature. The former philosophical motivation for constitutivism - most clearly present in much of Korsgaard’s relevant work - relies on the fact that constitutive norms seem to be less mysterious than not-clearly-constitutive norms. There is arguably nothing mysterious about, say, the norms of certain reasonably well-defined activities, such as building a house, or playing chess.” (p. 208)

This attempt to reduce the mysteriousness of the source and our access to normativity prompts constitutivists to derive the answers to the metaphysical and epistemic questions related to normativity from elements of how we are constituted.

The idea is that how we are constituted governs what we should do and, therefore, is the source of normativity. In “The Magic of Constitutivism” Michael Smith (2015) explains constitutivist approaches to explaining the source of normativity as sharing a commitment to the claim that normativity can be derived from elements of our constitution:

“Constitutivism is the view that we can derive a substantive account of normative reasons for action - Perhaps a Kantian account, perhaps a hedonistic account, perhaps a desire-fulfillment account, this is up for grabs- from abstract premises about the nature of action and agency. Constitutivists are thus bound together by their conviction that such a derivation is possible, not by their agreement about which substantive reasons can be derived, and not by agreement about the features of action and agency that permit the derivation.” (p. 187)

The key constitutive element of constitutivism is the derivation of norms from how elements of how subjects are constituted. Using our constitution to perform this derivation situates how we are constituted as the foundation of normativity in the sense that our constitution is the source of normativity. As the source of normativity our constitution is also the source of solutions to metaphysical and epistemic problems that relate to the nature of normativity: our constitution explains where normativity comes from and how we access that knowledge.

Christoph Hanisch explains this common feature of constitutivism in “Constitutivism and Inescapability: A Diagnosis” where he explains that this approach explaining the source of normativity is a ‘constitutivist maneuver’ that shares a two-level structure which appeals to an identifiable phenomenon experienced by a subject and then grounds that phenomenon in prescriptive propositions that relate to the functions of the agent (pp. 1156-1157). Constitutivism derives the source of normativity from how we are constituted by explaining that as subjects with particular elements present in our constitution we encounter normativity in our interactions with the world and when those encounters are traced back to their roots we find that those roots are elements of our own constitution. This is how the constitutivist maneuver demonstrates to the subject that they themselves, or at least elements of their constitution, are the source of those prescriptions that govern what they ought to do.

By identifying elements of our own constitution as the source of the normativity that we encounter in our experience of being a subject (interacting with the world, taking actions, making decisions, and so on) the hope is that this constitutivist maneuver has provided answers to questions that are otherwise difficult to reconcile. Luca Ferrero (2019) explains constitutivism in “The Simple Constitutivist Move” as tending to share a similar move:

“At first approximation, what seems to be common to various forms of constitutivism and constitutivist arguments is the following move: a subject is under a certain set of normative pressures because these pressures are constitutive of a certain activity or item. And if one fails to yield to these pressures, one would bring about the loss of the activity or the item in question - a price that, presumably, one is unwilling to pay.” (pp. 146-147)

So, constitutivism explains the source of norms by referring to the constitutive elements of the subject. It explains the force of those prescriptions by explaining that ignoring them causes some disjunction or disharmony with the elements of the subjects constitution from which they are derived². Ferrero continues this explanation with an analogy often used by constitutivists:

“The move is usually first introduced in terms of the constitutivist’s most beloved game: chess. The illustration goes something like this: A chess player must move the bishops along the diagonals because this is required by a constitutive norm of chess. If a purported chess-player does not abide by these constitutive norms, she thereby fails to be a chess-player. Hence, as long as one has reason to be playing chess, one ought to abide by the constitutive norms of chess. Generalizing: as long as one has reason to engage in some activity or with some item, one ought to comply with the constitutive standards of that activity or item.” (p. 147)

Constitutivism, broadly defined, is an exploration of the nature of what makes one a subject and utilising key elements of that nature (our constitution) to explain the source of normativity and, by doing this, solve metaphysical and epistemic problems related to the existence of normativity and our access to knowledge about it.

² The implications for the constitutivist position of a subject who claimed they were willing to pay this price, to accept disharmony or disjunction with the elements of their constitution that prescribe norms, is explored in § 0.5 where I explain the shmagency problem.

Constitutivism is frequently discussed in terms of what is constitutive of agency or action while the explanation I have just given extends this terminology to elements of the constitution of a subject in general. Earlier explanations of constitutivism, such as the explanation from Enoch that I began this section with refer to agency and action because the constitutivist literature begins with Kantian constitutivists who talk in these terms. Ferrero (2019) explains that constitutivism has become a broader project than the one begun by Kantian (and, perhaps, neo-aristotelian in the case of Korsgaard) constitutivists (p. 146). Ferrero explains that constitutivist attempts to explain the source and nature of normativity now include appeals to elements of our constitution beyond our agency and the nature of action (p. 157). While I have provided a broad explanation of the constitutivist approach to solving the metaphysical and epistemological problem of normativity, it is not within the scope of my thesis to explore non-Kantian constitutivist positions in any detail.

My exploration of Kantian constitutivism focuses on the work of David Velleman and Christine Korsgaard. Velleman and Korsgaard's projects are attempts to solve the problem of normativity via the constitutivist method: this means that they appeal to elements of our constitution to explain why normativity exists (why we experience it), by which I mean why there is such a thing as normativity, and how we have access to knowledge about normativity. The hope is that by explaining the nature of normativity they can develop substantive claims about what we ought to do and, by doing so, explain the nature of morality. In § 1 I explain and explore Velleman's constitutivist theory and Korsgaard's in § 2. For both philosophers their motivation in developing their constitutivist positions is to provide answers to this broad set of problems that I have described as the problem of normativity. I have described the problem of normativity as referring to the metaphysical and epistemological underpinnings of morality, but one might explain the same problem as the task of outlining a metaethical position: explaining what you are referring to when you speak about morality. In either case, the role of constitutivism is to provide the foundations required to have a discussion about the nature of morality and to justify the claims made about the content of a moral theory.

Velleman and Korsgaard develop constitutivist positions to explain the nature of morality: why there is such a thing as morality, how it relates to normativity more broadly understood, and how we have access to knowledge about normativity. The positions provided by Velleman and Korsgaard differ in both the Kantian constitutivist positions they develop and the type of explanation they provide. Velleman is attempting to explain why moral skepticism is partially justified while Korsgaard is attempting to demonstrate that moral skepticism is an error. So, Velleman provides a theory that attempts to demonstrate that morality is objective in a limited sense that is compatible with elements of skepticism while Korsgaard is attempting to demonstrate that morality is objective without such a limitation.

In *How We Get Along* Velleman (2009) explains that:

“My metaethics is rationalist in that it grounds morality in social phenomena that are themselves supported by practical reasoning. But morality is thus supported by rationality at one remove; and so its underpinnings are less secure than is generally

claimed in rationalist metaethics. In my view, practical reason is not in itself moral; it is merely pro-moral, in that it has encouraged us to develop a moral way of life. There was no antecedent guarantee that such a way of life would develop among rational agents, much less that moral conduct will be rationally required of every agent at all times. The most that metaethics can do in this regard is to show how the moral aspects of our way of life can be seen retrospectively as a rational development, a form of progress.” (p. 2)

In § 0.4 I explain that the Kantian tradition derives the objectivity of particular claims, such as those regarding morality, from the nature of the subject and throughout § 1 I explore the debate between Enoch and Velleman regarding the objectivity of the normativity that Velleman is attempting to establish in his theory. Velleman (2009) explains that he is to some extent a moral skeptic:

“There is an even deeper level at which I am skeptical about morality: I doubt whether it exists in the form traditionally envisioned by philosophers. In my view, there is no unitary point of view, source of reasons, or deliberative principle to which the term ‘morality’ refers.” (p. 3)

Velleman is not arguing for morality that is objective in the same sense that I explain in § 0.3 or in the sense that Enoch understands objectivity in the context of morality.

In §§ 1.1, 1.2, 1.3, and 1.5 I explain that Velleman and Enoch disagree about what it means for morality to be objective. Enoch critiques Velleman (see 1.1, and 1.2) on the grounds that his theory cannot provide objective normativity because it entails that different types of subjects will provide different answers to the same moral questions and, therefore, the morality provided by Velleman’s theory is contingent on elements of the subject (see § 0.5). Velleman’s reply (see §§ 1.4 and 1.5) is that his theory provides ‘objective’ answers to moral questions in the sense they provide answers that are true in a particular context: so, in the context of being a particular type of subject there are particular answers to moral questions. In § 1.6 I provide an alternative reply to Enoch’s critique that allows key elements of Velleman’s theory to argue that the answers to moral questions do not vary depending on contingent elements of the subject. By providing this alternative answer I demonstrate that key elements of Velleman’s theory are compatible with the elements of the Kantian tradition that I explain in §§ 0.4 and 1.6. Velleman’s theory does not provide objective normativity in the Kantian sense of objectivity that I explain in §§ 0.3 and 0.4, but this is not a failure of his theory so much as an acknowledgement that this is not what his theory is intending to do.

The solution to the problem of normativity provided by Korsgaard’s theory (explored in § 2) is attempting to provide objective normativity in the sense I explain in §§ 0.3 and 0.4. In “The Sources of Normativity” Korsgaard (1996) explains:

“It is often thought, though obscurely, that the normativity of ethics poses a special problem for *modern* moral philosophers. The Modern Scientific World View is supposed to be somehow inimical to ethics, while in different ways, the teleological metaphysics of the ancient Greek world and the religious systems of medieval Europe seemed friendlier to the subject. It is a little hard to put the point clearly and in a way that does not give rise to obvious objections, but both of these earlier outlooks seem to support the idea that

human life has a purpose which only is or can be fulfilled by those who live up to ethical standards and meet moral demands. And this is supposed to be sufficient to establish that ethics is really normative, that its demands on us are justified. They are justified in the name of life's purpose. While the Modern Scientific World View, in depriving us of the idea that the world has a purpose, has taken this justification away." (p. 18)

Korsgaard's constitutivism is an attempt to explain why we experience normativity and why moral demands are justified. She situates herself as arguing against competing explanations for why we experience normativity developed by modern philosophers (Korsgaard, 1996, pp. 18-48).

Korsgaard situates herself as solving problems facing substantive moral realists. Substantive moral realists argue that a belief in normative truth is established by the nature of normative entities external from ourselves (Korsgaard, 1996, p. 44). She argues that this position is vulnerable to skepticism because it is not clear that such external entities exist (pp. 45-46). Korsgaard (1996) describes the attempts to defend substantive as a misunderstanding of the nature of normativity:

"Contemporary defences of substantive moral realism almost always arise in the same way. They are always initiated by *somebody else*, a self-proclaimed spokesperson for the Modern Scientific World View. Whether this person really exists, or only haunts the anxious dreams of the moral philosopher, does not really matter. Armed with the distinction between facts and values, or brandishing Ockham's razor like a club, the spokesperson for the Modern Scientific World View declares that there cannot be ethical knowledge, that we can explain the moral phenomena without positing the existence of moral entities or facts, or that intrinsically normative entities are just too queer to exist. And the moral philosopher, frantic with the sense of impending loss, rushes to the defence of ethical knowledge. And almost nobody pauses to ask whether knowledge of ethical objects, or indeed any sort of knowledge at all, is really what we want in the first place." (p. 47)

Her point is that normativity is not derived from normative entities. Rather, she argues that normativity is derived from necessary elements of our constitution.

By providing a constitutivist explanation of the source of normativity Korsgaard is attempting to establish that the nature of ethical knowledge and our access to it does not rely on externally existent normative entities that are vulnerable to skeptical arguments. Korsgaard (1996) argues that:

"To raise the normative question is to ask whether our more unreflective moral beliefs and motives can withstand the test of reflection. The Platonic realist thinks that we can answer that question by taking a closer look at the *objects* of our beliefs and motives, to discover whether they are really the True and the Good. Nagel thinks we should take a closer look at the beliefs and motives themselves, to discover whether they are really reasons. But no such *discovery* is ever made. The realist's belief in the existence of normative entities is not based on any discovery. It is based on his *confidence* that beliefs and desires are normative." (pp. 47-48)

Korsgaard's argument is that we are right to be confident that beliefs and desires are normative, in the sense that there really are things we ought to do (that we really do have obligations). She argues that this confidence is not justified by an appeal to substantively real externally extant normative entities, but by an appeal to elements of our constitution (see § 2 for further development). Korsgaard develops a constitutivist position in an attempt to explain why normativity is something we provide, rather than something we discover out in the world.

Kantian constitutivists undertake the constitutivist approach by focusing on the rational faculties constitutive of agency. By "rational faculties" I refer to our capacity for reasoning and ability to decide what to do according to the dictates of that capacity. Luca Ferrero (2009) explains in "Constitutivism and Inescapable Agency" that the authority of reason and the categorical authority of normativity are related because of the necessity of agency (pp. 306-307). This line of argument is utilised by Kantian constitutivists to demonstrate that normativity is objective because it is an application of reason: I explain the objectivity of normativity further in § 0.3. The constitutive element of the self, according to Kantian constitutivism, is our faculty of reason and, hence, to determine what we ought to do we need to undertake an examination of this element of ourselves and derive norms from it. The idea is that being an agent and taking actions means having rational faculties and utilising them to control which decisions you make. This means that our rational faculties are constitutive of agency and action. The constitutive role of our rational faculties means that, according to the constitutivist approach, the norms that govern our behaviour are derived from those rational faculties.

The Kantian tradition provides support for the claim that our rational faculties are constitutive of what we are as subjects that take actions, that is, as agents. The constitutivist approach explains why this constitutive element of our identity entails that our rational faculties are the foundations for normativity. In § 0.3 I explain the nature of objectivity as it relates to normativity and the discussion of both constitutivism and the shmagency problem: according to Kantian constitutivists establishing that normativity is derived from a necessary element of our constitution is sufficient to justify its objectivity. In § 0.4 I explain the relationship between the constitutive role of our rational faculties and the Kantian tradition: according to the Kantian tradition reason gives us control over our own actions and is, therefore, the source of our autonomy. As the source of our autonomy, these rational faculties comprise our agency (see § 0.4 for further explanation). Hence, Kantian constitutivists derive normativity from necessary elements of our constitution and those necessary elements are constitutive of our autonomy. This is how Kantian constitutivists derive objective normativity from our agency.

0.3 Objectivity

The objectivity of normative facts is the key point of contention in the shmagency problem disagreement between Enoch and Kantian constitutivists. Despite this being the focus of the disagreement, the literature surrounding the shmagency problem does not always clarify what “objectivity” means. Throughout §§ 1 and 2, I explain that the disagreement between Enoch and Kantian constitutivism is a disagreement about the nature of objectivity as it regards normative facts. Enoch critiques the constitutivist approach for deriving normativity from elements of our constitution by arguing that norms derived in this manner cannot be objective because these elements of our constitution are contingent. Kantian constitutivism is predicated on the assertion that objective norms can be derived from elements of our constitution by restricting the elements utilised for this derivation to necessary elements of our constitution. This disagreement is a dispute about the possibility of a transcendental argument establishing objective facts by determining what must be the case based on elements of our constitution. My aim, in §§ 1 and 2, is to establish that this disagreement underlies Enoch’s critique of the constitutivist approach. To facilitate this I need to explain that the term “objectivity” is utilised by both Enoch and constitutivists in a manner that allows them to have some meaningful discussion.

The term “objectivity” is problematic in the shmagency problem debate because it is used in a manner that facilitates some level of meaningful discussion while also disguising the significant underlying disagreements that lead to my conclusions in §§ 1 and 2 that, when it comes to Kantian constitutivism, Enoch is arguing against the Kantian strategy rather than the constitutivist approach. In *Taking Morality Seriously* (2011b), Enoch argues that constitutivist and Platonist theories handle moral disagreement in the same way in the sense that neither type of theory allows for the variation of acceptable answers to moral questions due to matters of preference (p. 29-30). His point is that a theory purporting to establish objective moral facts will have some method of explaining why moral disagreements can be solved by referring to some element of the moral problem that makes some solution to the disagreement correct without appealing to something arbitrary or contingent. Enoch explains this in terms of theories that are response-dependent or response-independent. Theories that are response-dependent imply that the answers to moral questions depend on the response of the subject, and so the answers can vary from one person to another. Theories that are response-independent entail that the answers to moral questions depend on something other than the response of the subject. This characterisation of the role objectivity plays represents the difficulty associated with the use of the term “objectivity” in the shmagency problem debate because of “response-dependent” shortcomings as an explanation of subject-dependent theories of moral objectivity. Enoch’s point is that subject-dependent theories of morality cannot be objective, because they entail that moral norms depend on the response of subjects and that means they can vary, except when the response of those subjects is constrained in some manner that prevents the norms from varying. So, according to Enoch, in cases where theories that derive morals from subjects but measure the correctness of those responses by something that does not vary, such as reason or rationality, the response-dependent theories are “not different from that of the response *independence*, objectivist, Platonist” theories (p. 30). The difficulty arises

from there being a sense in which Enoch is correct to equate response-dependent theories and response-independent theories in regards to their attempts to establish objectivity and a sense in which this equivalence is inaccurate.

Enoch is correct, in the narrow sense that he does, to equate response-dependent and response-independent theories about morality in the sense that both can appeal to the invariability of correct responses to moral questions to justify their objectivity, but it is inaccurate to couch response-dependent as opposed to objectivity. Remember that the response-dependent theories Enoch draws this equivalence for are deriving the answers to normative questions from elements of the subject but not elements of the subject that permit variance in correct answers to normative questions (so, not subjectivists who are not trying to put forward objective normativity such as emotivists). The problem is that there is an epistemic and metaphysical divergence between response-dependent and response-independent theories that can be obscured by merely identifying the sense in which they are equivalent, and it is this difference that causes the disagreement between Enoch and Kantian constitutivism. I should clarify that I am not arguing that Enoch himself, in *Taking Morality Seriously* or other works, does not understand the difference between response-dependent objectivity (response-dependent, in Enoch's terms); I think his argument that response-dependent theories that do not allow for variability of correct answers are equivalent to response-independent theories is accurate and allows scope for understanding the important differences. Such important differences include, crucially, the Kantian approach to establishing objectivity by grounding the truth of answers in elements of the subject (see § 0.4). My point is that when both response-dependent and response-independent theories are asserting models of moral objectivity, the difference between the two positions is subtle enough that it can get lost in discussions which are not explicitly comparing response-dependent and response-independent theories of moral objectivity.

The shmagency problem debate is an indirect comparison of response-dependent and response-independent theories of morality. Or, at least, elements of such a comparison underwrite the more difficult elements of the debate. In § 0.5 I explain that Enoch's argument against constitutivism is that deriving normativity from elements of our constitution entails deriving normativity from something that is contingent in a sense that precludes it from delivering normativity that is objective. There are two things that this might mean: it might mean that constitutivists have derived normativity from contingent elements of our constitution, or it might mean that there are only contingent elements of our constitution. In either case, Enoch's argument entails that constitutivism is deriving normativity from contingent elements of our constitution, but in the latter case a further claim is made. The difference between these two possible meanings is crucial to the Kantian reply to the shmagency problem I develop in § 1.6, because there I explain that the Kantian strategy involves utilising transcendental arguments that establish claims as objective by deriving them from necessary elements of what we provide to the construction of experiences. As I develop and explain in §§ 1.6, 2.6, and 2.7, particular elements of our constitution are the source of objectivity, according to the Kantian tradition. This is significant regarding the use of the term "objectivity", because if Enoch is claiming that

constitutivists fail to deliver objective normativity because they derive normativity from contingent elements of our constitution, he is making a different argument than if he is claiming that our constitution *only* has contingent elements. The former is an argument against the constitutivist approach while the latter is an argument against Kantian epistemology and metaphysics.

I do not think Enoch would agree with me that an argument targeted at the constitutivist approach in particular requires the weaker claim that constitutivism utilises contingent elements of our constitution, while making the stronger claim that all elements of our constitution are contingent requires engaging with the Kantian theory of knowledge directly. I explain in §§ 1.8 and 2.7 that Enoch's shmagency problem critique does ultimately amount to a critique of the Kantian theory of knowledge, although he presents it as a critique of the constitutivist approach as such.

In this thesis I will use the term "objectivity" to refer to the necessity of the claim in question: a fact is objective if it is necessary that it is true. By using the term in this way I intend to make no assertion regarding whether this necessity is established because of a transcendental argument based on some element of what the subject provides to the creation of experience, by reference to an externally extant factual entity, or any other method of establishing the necessity of a claim. In particular contexts it may be the case that the objectivity in question is established by one of these positions rather than the other, for example when discussing the objectivity established by a transcendental argument, but in those cases I intend it to be the context rather than the mere use of the term "objective" that establishes that particular connotation. By using the term in this manner I hope to appeal to the functional sense of the term - the role the term plays of referring to the truth of the matter in particular epistemic and metaphysical contexts. This is the sense in which objectivity is the same for response-dependent and response-independent accounts of how the objectivity of particular claims is established.

0.4 Objectivity and the Kantian tradition

In the Kantian tradition, objectivity is derived from elements of what the subject provides to their experience of the world; I made this claim in § 0.3 to explain the distinction between critiquing constitutivism as such or critiquing the Kantian theory of knowledge. In §§ 1.3, 1.6, 1.7, 2.2, 2.7, and 3.1 I develop this claim further by explaining that the subject provides a necessary role in the Kantian tradition in establishing the objectivity of factual claims. While these explanations are provided throughout my thesis, they utilise one particular claim made by Kantian philosophy that I outline here: the claim that understanding the world, the nature of knowledge, and our access to knowledge of all kinds is response-dependent in the sense that the role of the subject is indispensable. The purpose of this explanation is to establish that the claim that objectivity can be derived from particular elements of a subjects constitution is a foundational claim of the Kantian tradition (at least, the Kantian tradition as it is utilised by Kantian constitutivists).

Immanuel Kant (1781-1787/1996) argues in *Critique of Pure Reason* that it is the nature of the subject that allows them to undertake a particular type of examination of their own consciousness and experiences to solve metaphysical and epistemological problems (A92-98, B125-129, B132-136). This examination is a transcendental apperception, an analysis of one's own consciousness and the experiences of one's consciousness according to the laws of reason in order to determine what the solution to these problems must be given the nature of one's consciousness and experiences. This type of transcendental argument is possible because of the guarantee provided by those laws of reason. The idea is that we can utilise our own rational faculties to determine answers to metaphysical and epistemological questions, such as what knowledge is and what exists, because the rules that govern our rational faculties (the rules of reason or logic) are uniquely qualified to justify claims related to such matters. This approach entails that it is what the subject provides, their rational faculties, that justifies claims about the nature of knowledge and what exists. My point is that because the Kantian approach to solving metaphysical and epistemological problems utilises transcendental apperception, it places the constitution of the subject in the position of being a required element of solving metaphysical and epistemological problems, rather than treating all elements of the constitution of the subject as contingent.

One might wonder whether this description of the role of our rational faculties is distinctly Kantian, or whether non-Kantians might agree that the rules that govern our rational faculties are uniquely qualified to justify claims related to the solutions to metaphysical and epistemological problems. To clarify, my exploration of the Kantian position as it relates to Kantian constitutivism and the shmagency problem does not demonstrate that non-Kantian positions cannot provide similar arguments. While this thesis makes frequent use of the Kantian tradition this is not because only the Kantian tradition is capable of supporting the positions I explore. Rather, I engage with the Kantian tradition because it informs the positions of Christine Korsgaard and David Velleman whose work I focus on during my exploration of Kantian constitutivism, the shmagency problem, and the prospects for the Kantian constitutivist position broadly understood.

In §§ 0.3, 1.8, and 2.7, I explain that the role of the constitution of the subject in solving metaphysical and epistemological problems is the point that Enoch's shmagency problem ultimately targets, rather than the constitutivist approach as such. Explaining what the Kantian means when they claim this role for the subject's constitution allows me to clarify my argument regarding the shmagency problem. This clarification requires explaining both the nature of Kantian response dependance, which I refer to throughout this thesis, and the argument that I am making in §§ 1.8 and 2.7. Explaining the Kantian claim that Enoch's shmagency problem targets allows me to explain the sense in which both Velleman and Enoch are correct in their claims during the shmagency problem debate (§ 1.5), develop a Kantian reply to the shmagency problem that preserves key elements of Velleman's theory (§§ 1.6, 1.7, and 1.8), and provide a reply to the shmagency problem in defence of Korsgaard's Kantian constitutivism (§ 2.7). Explaining this Kantian claim requires explaining both the role of the subject in Kantian epistemology and metaphysics and how this relates to Kantian constitutivism.

According to the Kantian tradition, and as utilised by Kantian constitutivism, the epistemic and metaphysical role of the subject is not merely that they are the one who knows things and accesses the world (and knowledge about the world). The claim is that they are the one who knows things about the world and because of the role they play in the process that allows them to have knowledge. Particular elements of their faculties are reliable in a special sense that allows these faculties to be used to determine solutions to metaphysical and epistemological problems (such as questions about the nature of knowledge and how we access it). Notice that Enoch's critique that constitutivism derives normativity from contingent elements of our constitution is incompatible with this approach if the Kantian is claiming that those elements of our faculties that are reliable in this special way are the same elements from which they derive normativity (this point is developed further in §§ 1.7 and 2.7). My argument that Enoch's critique targets this point is not claiming that Enoch's critique of the role of the subject in constitutivism entails that he is arguing knowledge is possible without being a subject of some kind or another. Enoch may believe that some version of this type of claim is true (in the form of externally existent factual entities which constitute knowledge independently of any interaction with them), but that is not relevant to my analysis. My argument is that Enoch's critique of the role of the subject in constitutivism entails that particular elements of the constitution of the subject cannot be reliable in the manner required to be able to derive objective metaphysical (in this case, metaethical) claims from them.

Remember that I am not intending to claim that the Kantian position is distinct in its ability to make the claims required to solve the shmagency problem or develop a constitutivist position. In § 1.6 and throughout § 2 I explain that the Kantian tradition provides the tools required to solve the shmagency problem, but I do not take this to entail that this would not be possible for competing positions. My caution in limiting my claims in this regard is not shared by Kant (1781/1787/1996) who claims that:

“We have sufficiently proved in the Transcendental Aesthetic that everything intuited in space or time, and hence all objects of experience possible for us, are nothing but

appearances. I.e., they are mere presentations that - in the way in which they are presented, viz., as extended beings, or as series of changes - have no existence with an intrinsic basis, i.e., outside our thoughts. This doctrinal system I call *transcendental idealism*. The realist in the transcendental meaning of this term turns these modifications of our sensibility into things in themselves.” (A419 B519)

Kant's point is that his theory establishes that we only have access to the appearances generated by us during the process of experience creation. This establishes, according to Kant, that all claims are dependent on these appearances. This includes the solutions to metaphysical and epistemological problems, which must be solved without access to anything beyond these presentations (including what is provided by our faculties during their creation). So, in the Kantian tradition, establishing why we encounter normativity and how we access knowledge about it is done within the context of the appearances generated by us during the process of experience creation.

This means that, for the Kantian tradition, solving the shmagency problem must be done without appealing to externally existent normative entities. If the problem cannot be solved within the context of this restriction then the shmagency problem would have succeeded in demonstrating that Kantian constitutivism cannot solve it. As Kant (1781/1787/1996) explains:

“[O]bjects of experience are *never* given *in themselves*, but are given only in experience and do not exist outside it at all. That there may be inhabitants on the moon, although no human being has ever perceived them, must indeed be conceded; but it signifies no more than that in the possible advance of experience we could come upon them. For anything is actual that stands in a context with a perception according to laws of empirical progression. Hence those inhabitants are actual if they stand in an empirical coherence with my actual consciousness, although they are not therefore actual in themselves, i.e., outside this advance of experience.” (A493 B521)

The idea is that we must deal with objects of experience as they are given to us and this limits ourselves to dealing with them as objects of appearance and never supposing that what is given amounts to a thing in itself. Kant continues this explanation by arguing that:

“Nothing is actually given to us but perception and the empirical advance from it to other possible perceptions. For appearances, as mere presentations, are in themselves actually only in perception; perception, in fact, is nothing but the actuality of an empirical presentation, i.e., appearance. If an appearance is called an actual thing prior to perception, then this signifies either that in the progression of experience we must come upon such a perception, or it has no signification at all. For that the appearance exists in itself, without reference to our senses and to possible experience, could indeed be said if we were talking about a thing in itself. But we are talking merely about an appearance in space and time, and both space and time are determinations not of things in themselves but only of our sensibility. Hence what is in space and time (viz., appearances) is not something in itself; rather, appearances are mere presentations, which, if they are not given in us (in perception), are not encountered anywhere at all.” (A493-494 B521-522)

Kant is arguing here that we do not encounter entities as they exist externally from ourselves and we only encounter what we are given. For this reason, according to Kant's argument, we

could never deal in externally existent normative entities because the truth of such entities would depend on those entities as they actually existed externally from ourselves and not merely upon what we are given.

So, in the context of the Kantian tradition any position which supposes that we can solve problems of any kind, including metaphysical and epistemological problems, by utilising things as they exist externally from ourselves cannot succeed. Providing solutions that are not derived from either what we provide, to the process of experience creation, or what we are given means providing a solution that assumes access we cannot have. Notice that in the event that a problem cannot be solved within the context of this restriction, this failure would not demonstrate that the shmagency problem cannot be solved, merely that it cannot be solved in the confines of the Kantian tradition.

This does not entail that the Kantian tradition supposes we solve metaphysical and epistemological problems with *only* what we provide to the process of experience creation. For Kant, the idea that we are given something during this process, from an external world that is not directly accessible, is important. Kant (1782/1787/1996) argues:

“Our power of sensible intuition is, in fact, only a receptivity, i.e., a capacity to be affected in a certain way with presentations. The relation of these presentations to one another is a pure intuition of space and time (which are nothing but forms of our sensibility); and insofar as these presentations are connected and determinable in this relation (i.e., in space and time) according to laws of the unity of experience, they are called *objects*.”
(A494 B522)

Kant's point is that while we only have access to the appearances of objects, these appearances contain, as representations, elements of both what we have provided to the process of experience creation and what we have received externally from ourselves. My point in explaining this is to clarify that Kant is not claiming that only the subject and what it provides exists. There is something external, we just do not have access to it beyond the awareness that what we receive comes from somewhere. Kant continues to explain that:

“We may, however, call the merely intelligible cause of appearances such as the transcendental object, just so that we have something that corresponds to sensibility, which is a receptivity. To this transcendental object we may attribute the whole range and coherence of our possible perceptions, and about it we may say that it is given in itself prior to all experience. But appearances are given, in conformity with the transcendental object, not in themselves but only in this experience. For they are mere presentations, which signify an actual object only as perceptions: they do so, viz., if such a perception coheres with all others according to the rules of the unity of experience.”
(A495 B523)

Kant's argument is that what we are given establishes that there is something external from ourselves providing what we are given. However, this does not entail any access to the thing in itself that is providing what we are given because what we have access to is limited to what is in conformity with the combination of what we have provided with what we are given.

In the context of the Kantian tradition we rely upon *both* what we are given and what we provide to the process of experience creation. In this context we cannot appeal to the objects in themselves or completely exclude the process of experience creation from our understanding³. This is how Kant situates himself in contrast to rival positions that might suppose access to objects as they exist in themselves or that stipulate we alone provide everything with no input from an external world. To clarify, I do not intend to argue here or elsewhere in this thesis that Kant's position provides a solution to epistemic and metaphysical positions that might not be emulated by rival positions. Rather, I intend to present, explore, and explain the implications of the Kantian tradition in the context of Kantian constitutivism.

Kant argues that the subject provides the rules of understanding during the process of experience creation. His point is that our faculty of reason is a fundamental part of what makes us who and what we are. This point is developed by Kant when he argues that discovering the nature of knowledge and our access to the world is fundamentally an activity of introspection:

“And it is a call to reason to take on once again the most difficult of all its tasks —viz., that of self-cognition- and to set up a tribunal that will make reason secure in its rightful claims and will dismiss all baseless pretensions, not by fiat but in accordance with reason's eternal and immutable laws. This tribunal is none other than the critique of reason itself: the *critique of pure reason*.” (Kant, 1781/1996, Axi)

The subject undertaking this activity of introspection is capable of examining its own faculties because it is a rational being. The subject's ability to use reason provides the possibility of answering questions about the nature of knowledge and our access to the world. As Kant outlines from the beginning of his project, reason is capable of such an act of apperception because its laws are eternal and immutable. It is the absolute, and in this sense objective, nature of the laws of logic which enables the rational being to utilise them as tools of reliable measurement even when (carefully) turned upon themselves. It is in this sense that the critique of pure reason is both an activity of introspection and, through this introspection, an exploration of these immutable laws:

“By critique of pure reason, however, I do not mean a critique of books and systems, but I mean the critique of our power of reason as such, in regard to all cognitions after which reason may strive *independently of all experience*. Hence I mean by it the decision as to whether a metaphysic as such is possible or impossible, and the determination of its sources as well as its range and bounds — all on the basis of principles.” (Kant, 1781/1996, Axi)

To explore reason is to explore the limits of these immutable laws and to explore the nature of the rules of understanding. The rules of understanding are, for Kant, elements of ourselves which can be uncovered by introspection when such apperception is undertaken in accordance

³ Notice that this makes Kant's position incompatible with transcendental realism and subjective idealism which will, respectively, either require access to the things in themselves or fail to account for what is beyond ourselves that is providing what we are given. To clarify, my explanation of where Kant situates himself in relation to these rival positions is provided merely to explain his position but not to endorse it or provide a full exploration of these rival positions (such an exploration would be beyond the scope of my thesis).

with the immutable and eternal laws, which is a way of saying that reason can be used to evaluate itself if it is used appropriately. In this sense, elements of our own constitution can be used to reveal the nature of reason itself and in doing so answer epistemic and metaphysical questions. By elements of ourselves, as he explains in his transcendental aesthetic, Kant means that human beings are defined as rational beings because they have access to these immutable and eternal laws; which is to say, the defining feature of a rational being is to have this type of access to logic (Kant, 1781, A19-49, B33-73). This is how his project establishes the mind's ability to transcend the apparent limits of our experience of the world by deriving the nature of knowledge and how we access it from what we provide to the creation of those experiences.

The deduction from what our faculty of reason provides to the creation of our experiences is possible because of the necessary nature of the rules of understanding. The difficulty of such a task is directly or indirectly the focus of Kant's introspections throughout the *Critique*. He argues that we can deduce the nature of knowledge and our access to the world because the eternal and immutable laws that our faculty of reason provides are the necessary laws by which our rational cognition must operate (it is, in fact, the government of these laws which identifies rational cognition *as rational*). According to Kant it is these laws that unify our consciousness, which leads him to argue that only the unity of consciousness is objectively valid (1787/1996, B141). This entails that all other objective claims are derived from the objective validity of consciousness. Another way of explaining this point is that everything a subject knows must rely on the unity of their consciousness because it is the rules of reason that facilitates that knowledge. This is the manner in which Kant establishes the necessity, and therefore reliability, of the rules of reason that a subject's faculty of reason provides to its experience of the world. Notice that this does not entail the claim that one's faculties are necessarily reliable: it entails that one's faculty of reason is necessarily reliable *provided it is appropriately utilised*, which means utilised according to the same rules that it provides (the laws of reason).

Kant's point is that the elements of what the subject provides to the creation of their experience of the world are reliable, in the sense that they are necessary, because the subject provides the laws of reason. Kant explains this claim by arguing that we know ourselves by identifying what we provide to the creation of our experience of the world:

"Our cognition arises from two basic sources of the mind. The first is [our ability] to receive presentations (and is our receptivity for impressions); the second is our ability to cognize an object through these presentations (and is the spontaneity of concepts). Through receptivity an object is *given* to us, through spontaneity an object is *thought* in relation to that [given] presentation (which [otherwise] is a mere determination of the mind). Intuition and concepts therefore, constitute the elements of our cognition." (Kant, 1781/1787/1996, A74 B50)

Kant's point is that we identify ourselves with the faculty that undertakes the categorisation of the world and, by undertaking this categorisation, understand the world that we experience. We are, in this sense, our ability to understand the world. He then goes on to support this argument by explaining that the rules of reason, in the form of the categories, are the only manner by

which our consciousness could be unified (1781/1996, B146). Our consciousness could only be unified by the rules of reason because these rules are necessary, which means that any attempt at unification that did not adhere to the rules of reason would be a failed unity (a subject not adhering to the rules of reason would not be coherent, because failing to adhere to the rules of reason is to be incoherent).

It is from this same faculty of understanding that Kantian constitutivists derive normativity. As I explain in §§ 1.2, 2.1, and 3.3, Kantian constitutivism derives normativity from our ability to utilise our faculty of reason to decide what to do. In §§ 3.1, 3.3, 3.7 and 3.8, I explain that Kantian constitutivism simultaneously derives normativity from our ability to understand the world (our faculty of reason) and our autonomy (our freedom and the free will). The explanation that I develop in these sections is that these are the same faculty in the sense that our autonomy (and, therefore, our freedom and the free will) *is* our ability to utilise our faculty of reason to reflect upon a decision and decide what to do. My point is that because our autonomy is derived from our faculty of reason, deriving normativity from our autonomy entails deriving normativity from our faculty of reason. Our autonomy is derived from our faculty of reason in the sense that our autonomy is our faculty of reason in action. Practical reason is the application of our faculty of reason to the problem of deciding what to do and, therefore, practical reason is also our autonomy (our ability to control ourselves) in action.⁴ So, the relationship between Kantian constitutivism and the Kantian strategy of deriving epistemic and metaphysical claims from the nature of the subject is that both Kantian constitutivism and the Kantian strategy derive their claims from the same necessary element of the subject (I discuss this claim further in § 3.3). This is the relationship between objectivity and the Kantian tradition.

Karl Schafer (2019) puts forward a similar argument about the relationship between Kantian and constitutivism when he argues that Kant is a constitutivist because he is “convinced that human insight bottoms out in a set of basic faculties — faculties which cannot be explained in more fundamental terms, but which nonetheless provide a non-arbitrary basis for further explanations” (p. 4).⁵ Schafer explains that Kant’s use of our basic rational faculties as the foundations for his system of philosophy, in particular his foundational epistemic and metaphysical claims about the nature of knowledge and existence, commits him to a form of capacities-first constitutivism when that foundational approach is applied to normativity; he summarises this form of capacities-first constitutivism as “Reason-First Constitutivism”, which means: “The most fundamental norms that apply to us are grounded in our nature as *rational* beings or creatures with *the capacity of reason*.” (p. 11). By “capacities-first constitutivism” he means that our capacities must be the grounding of all epistemic and metaphysical claims. Schafer’s point is the same as my own, which is that Kant’s derivation of epistemic and metaphysical claims from some foundational element of our faculties results in the same foundations being used for both Kant’s epistemic and metaphysical claims and the Kantian constitutivist claims about the source (or foundation) of normativity. Crucially, for the scope and focus of this thesis, this common

⁴ See § 3 (in particular §§ 3.1, 3.3, 3.7 and 3.8) for further explanation.

⁵ Schafer explains this further on pp. 2, 4-6, and 9-10.

foundation is the key relationship between Kantian constitutivism and the broader Kantian tradition (this point is expanded upon further in § 3.3).

0.5 The shmagency problem

David Enoch (2006) posed the shmagency problem as a critique of the constitutivist approach in “Agency, Shmagency: Why Normativity Won’t Come From What Is Constitutive of Action”. Enoch argues that constitutivism cannot ground normativity because there is at least one normative question that constitutivism cannot answer (p. 187). The critique is demonstrated by the shmagency problem question: ‘Why be an agent?’. To answer this question the agent must purportedly appeal to something beyond what is constitutive of its own agency, but making such an appeal proves that what is constitutive of their agency cannot be the grounding for all normativity facts: if there is a reason to be an agent, it will be something other than the fact that one is already an agent.

Constitutivism attempts to ground normativity in what is constitutive of action or agency. This is accomplished by arguing that what one ought to do is determined by what is constitutive of one’s agency.⁶ According to the constitutivist approach, for agents to understand the nature of normative facts, they must first understand what it is to be an agent so that they can understand what functions are constitutive of their own nature. In §0.2 I provide an explanation of the constitutivist position; as a reminder consider this excerpt where Enoch (2006) explains constitutivism as the attempt to derive the normativity that governs us from those elements of our constitution that make us the type of thing that we are:

“The intuitive idea can be put, I think, rather simply: In order to know what it takes for a car to be a good car, we need to understand what cars are, what their constitutive functions are, and so on. A good car is just a car that is good *as a car*, good, that is, in measuring up to the standards a commitment to which is built into the very classification of an object as a car. Analogously, then, perhaps in order to know which actions are good (or right, or reason supported, or rational, or whatever), all we need is a better understanding of what actions are, or perhaps of what it is to be an agent, someone who performs actions. Perhaps the normative standards relevant for actions will fall out of an understanding of what is constitutive of action just as the normative standards relevant for cars fall out of an understanding of what is constitutive of cars.” (p. 170).

If this approach is successful, understanding what is constitutive of agency would both explain the source of normativity and how we are to derive normative content from that source.

The purpose of the shmagency problem is to demonstrate that constitutivism, on its own, does not provide a sufficient explanation of the source of normativity. It accomplishes this by showing that constitutivism must refer to a source of normativity beyond what our constitution as agents

⁶ An explanation of Velleman’s constitutivism follows later. For further explanation and examinations of the constitutivist approach see: Kathryn Lindeman’s (2017) “Constitutivism Without Normative Thresholds” in which she explains the relationship between metaphysical kinds and the constitutivist grounding of normativity, Christoph Hanisch’s (2016) “Constitutivism and Inescapability: A Diagnosis” in which he explains the constitutivist maneuver as sharing a two-level structure in that appeals to an identifiable phenomenon in the experiences of an agent and then grounds that phenomenon in prescriptive propositions that relate to inescapable functions of the agent (pp. 1156-1157), and Michael Smith’s (2015) “The Magic of Constitutivism” in which he argues that normativity must be grounded in what is constitutive of ideal agents (pp. 193-194).

can provide to answer at least some questions. The extent of this problem is summarised by Berteau (2013) in "Constitutivism and Normativity: a Qualified Defence" where he explains that:

"There is nothing about constitutivism that can demonstrate why we ought to be agents. But, insofar as we have no special normative reason to be agents, the standards constitutive of agency ultimately fail to provide us with a normative standpoint. Constitutive standards, thus, prove to be by themselves unable to issue normative requirements, namely, requirements we ought to follow on the basis of their being justified by virtue of agency itself." (p. 84)

The nature of the problem is such that the inability to answer the shmagency problem question undermines the ability of a constitutivist approach to answer *any* normative question. This is because the reasons we have to be an agent underwrite whatever normativity agency itself provides.

To explain further, if the constitutivist tells us that being an agent provides us with a reason to hold a particular belief or take a particular course of action then we will reply that we have not yet been provided the full explanation of why we ought to hold that particular belief or take that particular course of action. We might provide this reply because the constitutivist's explanation is not yet finished, they must still account for why we ought to do what an agent ought to do. This is not to say that it could not be the case that agents ought to do exactly what constitutivists assert: rather, the problem is that the reason we ought to do what agents ought to do must be because we have a reason to be an agent. As Enoch (2006) explains the problem in "Agency, Shmagency: Why Normativity Won't Come from What Is Constitutive of Action":

"Perhaps I cannot be classified as an agent without aiming to constitute myself. But why should I be an agent? Perhaps I can't act without aiming at self-constitution, but why should I act? If your reasoning [Korsgaard, and constitutivists in general] works, this just shows that I don't care about agency and action. I am perfectly happy being a shmagent - a non agent who is very similar to agents but who lacks the aim (constitutive of agency but not of shmagency) of self-constitution. I am perfectly happy performing shmactions - nonaction events that are very similar to actions but that lack the aim (constitutive of actions but not of shmactions) of self constitution." (p. 179)

The constitutivist appears to have nothing to say in response to such a position because their argument, that normativity is found in what is constitutive of agency, flatly cannot extend to this position. The position of questioning the normativity of agency itself ('why be an agent, rather than a shmagent') is fundamentally beyond the scope of constitutivism because it is precisely the dictates sources in agency which are in question; and so cannot be used to solve the problem yet are all that constitutivism can provide. As Enoch (2006) summarises the situation the shmagency problem puts the constitutivist in:

"Notice that the problem is not that action does not have a constitutive aim, or that there are no motives and capacities constitutive of agency. Indeed, I am here granting these claims for the sake of argument. Nor is the problem that such constitutive aims, motives, and capacities are philosophically uninteresting. For all I am about to say, they may be able to explain much that is philosophically important as well as interesting. The problem

is just that it is hard to see how the constitutivist strategy can serve to ground normativity or to solve the metanormative problems it was supposed to solve.” (p. 180)

The problem posed by the shmagency problem question is that rules constitutive of particular activities (such as being an agent) cannot prescribe whether you ought to undertake that activity.

Rawls (1955) presents the explanation of a similar problem in “Two concepts of rules”:

“This point is illustrated by the behavior expected of a player in games. If one wants to play a game, one doesn't treat the rules of the game as guides as to what is best in particular cases. In a game of baseball if a batter were to ask “Can I have four strikes?” it would be assumed that he was asking what the rule was; and if, when told what the rule was, he were to say that he meant that on this occasion he thought it would be best on the whole for him to have four strikes rather than three, this would be most kindly taken as a joke. One might contend that baseball would be a better game if four strikes were allowed instead of three; but one cannot picture the rules as guides to what is best on the whole in particular cases, and question their applicability to particular cases as particular cases.” (p. 26)

The problem Rawls identifies is that there is a gap between rules which are regulative and rules which are constitutive. Rules which are regulative (describe what you ought to do) are subject to further normative questions whenever they are deployed. Which is to say, when you put forward an ought statement there is a further story to give in terms of *other* normative claims. Rawls does not relate this problem to constitutivism (his work predates constitutivism as such), but it is relevant to the Enoch's shmagency problem because the constitutivist is arguing that regulative rules ultimately rest on a constitutive rule or a set of constitutive rules (they argue that the rules constitutive of agency or action are the source of normativity). Deriving the regulative from the constitutive has presented the constitutivist with a particular problem: the shmagency problem. Constitutive rules are treated as authoritative in a particular context, such as within the context of the game that they constitute, and the shmagency problem attempts to demonstrate that deriving rules to regulate our lives from our constitution can only be justified if we are provided a reason to endorse our constitution. Just like one only has a reason to obey the rules that are constitutive of baseball if one first has a reason to play baseball, Enoch argues that one only has a reason to obey the rules that are constitutive of agency or action if one first has a reason to be an agent or act. This, according to Enoch, demonstrates that the reason to endorse agency or action (and therefore the rules that follow from agency or action) is contingent on whatever reason we have to give that endorsement.

One might think that there are two distinct problems being posed by Enoch's shmagency problem: that one's reason to endorse agency must involve an appeal to something *beyond* what the subject provides (something external) and that the normativity entailed by our constitution is as contingent as the nature of agency. The difference between these two problems is that the former makes a claim about what normativity must be (something beyond the subject) while the latter makes a claim about the shortcomings of constitutivism. This understanding of the shmagency problem might arise because the shmagency problem can be

characterised as arguing that any reason we have to be an agent will be something other than that fact that we are already agents. This might lead one to assume that the shmagency problem relies upon an appeal to normativity that is beyond whatever can be provided by subjects and, therefore, upon something external to subjects. To avoid confusion I want to clarify that the shmagency problem does *not* require that the objectivity of normativity involves an appeal beyond the subject. Enoch may well believe that this is the case and, perhaps, his posing of the shmagency problem is motivated by such a position. However, the shmagency problem as such is not an attempt to demonstrate that normativity must involve an appeal to something external from what subjects provide⁷. Rather, the shmagency problem is an attempt to demonstrate that constitutivism cannot provide objective normativity: the claim about what can do so is not required for Enoch's shmagency problem argument (the shmagency problem only seeks to demonstrate that constitutivism cannot do so).

Enoch argues that the constitutivist approach to grounding normativity in what is constitutive of agency cannot be successful because the nature of agency is contingent. He argues that the possibility (regardless of whether it is hypothetically or actually possible) of the constitution of one agent being different from another entails that normativity derived from the constitution agency could also vary. His point is that if my constitution, as an agent, is contingent in the sense that it could have been, or could be, other than it is then any normativity I derive from that constitution will be contingent too: if normativity comes from agency, then normativity is as contingent as the nature of agency. Another way to explain this point is that the shmagency problem critique attempts to demonstrate that agents can ask normative questions about their own constitution which cannot be answered with reference to that constitution. In this way, Enoch attempts to demonstrate that *even if* the constitutivist approach grounds answers for the majority of normative questions, it cannot provide an objective answer to the question 'Why be an agent?', because the answers provided by constitutivism *assume* agency. So, any constitutivist answer to questions about how we are constituted would be merely assuming the answer rather than providing an appropriate grounding for the answer. While it may not be the case that any one of us could, in fact, cease being an agent, we can ask whether we ought to be an agent, and the hypothetical case of a subject who is not an agent, a shmagent, demonstrates that there is at least one normative question to which agency itself cannot provide an answer ('Why be an agent?'). Enoch points out that it follows from constitutivism that differently constituted subjects could give different answers to normative questions *because they are differently constituted*. Once we have imagined such a variation of constitution between subjects, we can consider whether we ought to be differently constituted ourselves, and we cannot find the answer to that question in what is constitutive of ourselves.⁸

⁷ Enoch (2011b) does provide an argument for this position in "Taking Morality Seriously: A Defence of Robust Realism", but this is a project in its own right and should not be conflated with the shmagency problem.

⁸ Allan Gibbard (1999) poses a similar criticism of constitutivism in "Morality as Consistency in Living: Korsgaard's Kantian Lectures" targeted at Korsgaard's constitutivism where he argues that her theory forgoes objectivity by deriving normativity from foundations that do not entail sensible or decent normative prescriptions (p. 159). He argues that valuing oneself in the manner Korsgaard envisions might entail valuing one's own reasons but that it does not entail valuing the reasons of other agents because there is

The shmagency problem leverages the distinction between non-normative necessity and normative necessity to demonstrate that constitutivism cannot ground all normativity even if agency is necessary. An agent may ask normative questions about their own agency regardless of whether agency is necessary or not.⁹ The constitutivist approach derives normativity from agency and so, as the shmagency problem demonstrates, the normativity that constitutivism derives is as contingent as agency: hence, the shmagency problem is derived from the contingency of our agency. So, a constitutivist might reply that one is *necessarily* an agent and therefore questions which entertain alternative possibilities are irrelevant. If the contingency of agency entails the shmagency problem, then the solution might be, as some constitutivists have hoped, to simply point out that agency is not in fact contingent: rather, agency is inescapable. A hope which, as I will explain later, can be realised by the Kantian reply to the shmagency problem that I present § 1.6. This inescapability response to the shmagency problem is anticipated by Enoch (2006) (pp. 187-191) and a summary of why it persists despite this is given by Luca Ferrero (2009) in “Constitutivism and the Inescapability of Agency” who explains why the inescapability of agency might be considered a special case which does not allow for the consideration of hypothetical alternatives (pp. 308-312).

Enoch (2006) argues that normative necessity cannot be established on the grounds of non-normative necessity (pp. 187-191). This did not stop replies to the shmagency problem from putting forward this line of argument. These replies establish the normative necessity of agency, on the basis of the non-normative necessity of agency, by positing some relationship between agency and normativity. Velleman’s reply, given later in this paper, is one example of this approach. The normative necessity of agency is established in this manner by arguing that it is not problematic for normativity to be contingent on agency. Velleman accomplishes this by accepting relativist foundations for normativity. Another example is Connie Rosati who does this in “Agents and Shmagents” by arguing that grounding answers to normative questions in our own constitution is not problematic, even when those questions are about the same constitution being used to ground normativity (p. 203). Rosati’s argues that while Enoch has demonstrated that constitutivism is circular, because there are normative questions about our constitution, he has not demonstrated that this circularity is vicious. The idea is that this solves the problem because, when it comes to epistemic foundations, some circularity is not problematic. Rosati’s point is that Enoch’s challenge can be considered as simply outside the scope of normativity: one cannot ask whether one should be an agent, because those questions are not within the purview of normativity. However, this solution requires explaining why those questions are not

an explanatory gap between what constitutes a coherency requirement and the actual reasons for action manifested by any particular agent (p. 132). It is possible that this explanatory gap between the coherency requirement of Kantian constitutivism and the reasons for action of any particular agent could be reconstructed as a similar critique to Enoch’s shmagency problem. If so, then the solutions to Enoch’s shmagency problem that I provide in §§ 1.6 and 2.7 may also apply to Gibbard’s critique.

⁹ Eric Wiland (2012) explains this point in a similar manner in *Reasons* where he summarises the point of the shmagency problem as identifying a substantive value claim that must come before the constitutivist maneuver and which the constitutivist maneuver depends on (p. 137).

within the purview of normativity (which is one of the solutions my Kantian reply to the shmagency problem provides in §1.6).

The inescapability response to the shmagency problem argues that agency is not contingent because we *must* be agents. However, this reply is unsuccessful because it erroneously conflates normative necessity and non-normative necessity: it is not the case that something being necessary entails that it ought to be the case. The necessity of something does not, simply *because of* that necessity, entail that it ought to be the case. So, even if one is necessarily an agent that does not, at least not *simply for the reason that it is necessary*, entail that one ought to be an agent. It is for this reason that Enoch (2006) argues the shmagency problem question ('why be an agent?') demonstrates that agency is normatively contingent (might be good or bad, right or wrong, justified or unjustified) and so cannot be the grounding for normativity (pp. 177-179 and 187-191). The problem is that a normative theory needs to be able to answer normative questions about how we are constituted and being able to answer those kinds of questions requires being able to justify (or critique) our own constitution.

Normative theories need to be able to answer normative questions about how we are constituted because those questions can intelligibly be asked. The underlying assumption is that a complete normative theory will be able to answer, or account for in some sense, all normative questions. Hence, because there are normative questions about how we are constituted, normative theories have to explain where the answers to those questions come from (how they are grounded, what makes the answers to those questions count as right or wrong). This is a problem for constitutivism in particular, because it requires that our own constitutions ground the answers to all normative questions and that requires that how we are constituted is not contingent, because if how we are constituted is contingent the normativity grounded in it will also be contingent. While our agency may be non-normatively necessary (and so not contingent for non-normative purposes), the fact that there are still normative questions to ask entails that it is *normatively contingent* on whatever the answers to those questions are. It is normatively contingent in the sense that it may be justified or unjustified (right or not, good or not) depending on the answer to the question at hand, which is the question of whether it is justified. This problem is exacerbated by the circularity that this entails for constitutivism; if the justification for how we are constituted (why we should endorse our constitution so that we can, in turn, endorse the normativity derived from it) is itself grounded in how we are constituted, then our own constitution is normatively contingent and so are the prescriptions derived from it (so the justification for our constitution is contingent on the prescriptions derived from that same constitution).

The distinction between normative necessity and non-normative necessity entails that the non-normative necessity of agency cannot be used to derive the normative necessity of agency. This is the reason that the *hypothetical* variation of responses between subjects demonstrates that the constitutivist approach cannot provide objective solutions to all normative questions. As Enoch (2011a) argues in "Shmagency Revisited", even if the shmagent itself is impossible, even if we could never be a shmagent or even if they could never exist at all, the hypothetical

question ('why be an agent?') still makes sense and is still an example of a normative question to which constitutivism cannot provide the answer (p. 225). Hypothetical questions about what ought to be the case (normative questions) can make sense even if the actualities entertained in the question are not feasible and therefore the shmagency problem undermines the constitutivist approach even if agency is inescapable.

In summary, the shmagency problem establishes that how we are constituted cannot ground normativity because it cannot answer all normative questions. Constitutivism cannot answer normative questions that relate to our constitution, which means that the normative questions constitutivism cannot answer are particularly problematic because they are questions about how we are constituted: hence, constitutivism cannot justify the source of normativity that it proposes. This puts constitutivism in the position of having to explain why the shmagency problem question ('why be an agent?') is unanswerable, or why it is not problematic to answer it with reference to the same thing that is in question (our constitution). So, the constitutivist must justify a circular answer or critique the possibility of asking such questions.

0.6 Thesis structure

This thesis is divided into three sections, with the first covering Velleman's constitutivism and the shmagency problem, the second Korsgaard's constitutivism and the shmagency problem, and the third section developing my argument for scalar deontology. While these three topics are distinct enough that they could have been written as stand alone pieces, they explore the same core areas of inquiry, which allows them to be efficiently presented as connected pieces of research. The common areas of inquiry are: the nature of objective knowledge claims about normative facts, the metanormative project of the Kantian strategy (using transcendental arguments to establish claims about the nature of normativity) and the constitutivist approach (deriving claims about normativity from how we are constituted), and the developments of Korsgaard and Velleman's constitutivist theories. The first two sections develop responses to Enoch's shmagency problem critique and take advantage of the common areas of inquiry to minimise the explanation of shared topics, while also providing a contrast between these two types of Kantian constitutivism. The third section puts forward my argument for scalar deontology and refers to the common areas of inquiry developed in the first two sections to demonstrate why scalar deontology follows from the core claims of Kantian constitutivism.

Section 1: Velleman's constitutivism and the shmagency problem

This section explains why Enoch's shmagency problem does not apply to Velleman's constitutivism and presents this as the results of the debate between these two philosophers. The shmagency problem does not apply to Velleman's constitutivism because Velleman and Enoch do not mean the same thing when they refer to 'objective moral facts'. This becomes clear during the debate between Velleman and Enoch when Velleman expands on his claims about the foundations of morality and puts forward a position that purports to establish objective norms with relativist foundations. Velleman (2013) attempts to establish this position in *Foundations For Moral Relativism* by arguing that moral facts are objective within particular frames of reference but that those frames of reference are relative (pp. 47-53). My summary of the results of the debate between Velleman and Enoch clarifies the positions of the two philosophers on what counts as objectivity about normative facts: they disagree about what objectivity means, with the position on the nature of normativity of each philosopher being correct within the particular definition of objectivity that they espouse. With the results of this debate established, I explain why Velleman's commitment to relativist foundations is a substantial deviation from the Kantian tradition and argue that key elements of his constitutivist theory can be defended from the shmagency problem without forgoing the Kantian roots to this extent. I develop a Kantian reply to the shmagency problem that is similar to Velleman's reply to the extent that it involves arguing that Enoch means something different by objectivity than the Kantian. I establish this by explaining that deriving objective knowledge from necessary and constitutive elements of our rational faculties is how objectivity is established in Kantian epistemology. This demonstrates that Enoch's critique, when applied to Kantian constitutivism, is not so much a critique of the constitutivist approach as such but a critique of the entire Kantian epistemic project. By identifying that Enoch's critique attacks this Kantian theory of knowledge rather than constitutivism in particular, I show that utilising the constitutivist approach does not introduce any new problems for the Kantian.

Section 2: Korsgaard's constitutivism and developing a reply to the shmagency problem

Korsgaard does not provide a reply to the shmagency problem, but in this section I argue that she does provide a solution in the sense that she has already developed the tools required to solve it. Korsgaard indirectly provides this solution to the shmagency problem when she replies to the bad action critique of her constitutivism presented by Gerald Cohen (1996) in "Reason Humanity and the Moral Law" where he argues that because Korsgaard derives norms from our constitution, she has no method of convincing a subject to obey the norms derived from one element of their constitution over norms derived from another element (pp. 178-184).

Korsgaard's reply to this critique is that the particular element she derives normativity from is privileged over other elements that could provide competing norms, because the element she derives normativity from is the same element that facilitates reflective endorsement in the first place. My argument is that this reply to Cohen also serves, with some clarification and development, as a reply to Enoch. The argument, as it applies to Enoch's critique, is that the necessity of the constitutive elements Korsgaard derives normativity from allows those elements to be suitable candidates for a transcendental argument while disallowing potential competing constitutive elements from being both in conflict with them and necessary.

Section 3: Scalar deontology

Both Velleman's and Korsgaard's approaches to Kantian constitutivism derive normativity from autonomy and argue that what is constitutive of agency is the attempt to constitute oneself in particular ways according to the obligations placed upon oneself by one's faculty of reason. This entails that normativity either exists, or needs to be understood, in the context of a particular position - the position of a subject that is making a decision (a subject using their faculty of reason). Understanding normativity in this context allows us to understand the ongoing project of self-constitution and derive norms from the constitutive elements of that project. Because these norms are derived from this position, features of that position determine the nature of those norms and, therefore, the nature of normativity as such. In this section I argue that understanding one's project of self-constitution as an ongoing process that is pursued to varying levels of success, rather than something that is either a failure or a success, allows the development of a scalar deontology. By a "scalar deontology" I mean a formulation of the categorical imperative which identifies that our obligation to ourselves, our duty to constitute ourselves coherently, is something we fulfil to a greater or lesser extent. My argument is that normativity must be formulated in a manner that is understandable from the position of the subject that is exercising their autonomy, because it is autonomy that normativity is derived from. Formulating normativity so that it can be understood by a subject exercising their autonomy requires developing a scalar formulation of the categorical imperative that explains why our obligation is something that we are capable of pursuing even if we do not eventually succeed at complete coherence or intelligibility.

Section 1: Enoch and Velleman's shmagency debate

1.0 Enoch and Velleman's shmagency debate

Analysing the shmagency problem debate between David Enoch and David Velleman clarifies the epistemic and metaphysical claims underlying their positions. Enoch's shmagency problem critique is successful when one accepts a realist theory of knowledge that allows for normative questions that are external from, and independent of, the nature of any subject (the qualities that make the subject what it is). However, Enoch's critique does not apply to Velleman's theory, because Velleman relies on a relativist theory of knowledge about normative facts that does not allow for normative questions that are external from the nature of the subject: these external questions cannot be allowed, according to Velleman, because it is the subject itself which must ask the questions (including the shmagency problem question: 'why be an agent'). Velleman's relativist theory of normative knowledge claims that both normative facts and the criterion for their correctness are provided by the subject. Velleman's theory is relativist in the sense that it entails that normativity is relative to the nature of the subject and altering that nature could change the moral law. Between Velleman's relativism and Enoch's realism there is the possibility of a third outcome to the shmagency problem, a Kantian reply which solves the problem by arguing that particular elements of the nature of the subject is necessary for *all* knowledge claims and, therefore, alterations in that nature are not possible (which means that altering the nature of a subject cannot be done in order to alter the moral law). The shmagency problem debate serves the function of revealing these three distinct positions and their implications for constitutivism as the source of all normativity.

In order to demonstrate the results of the shmagency problem debate between Enoch and Velleman, I first explain the shmagency problem itself, then I explain Velleman's constitutivism, followed by why the shmagency problem applies to Velleman's constitutivism, Velleman's reply to the shmagency problem, and then the cost (implications) of Velleman's reply. The result of the debate is that Velleman's position entails normative relativism. With the results of the debate between Velleman and Enoch established I then present the alternative reply to the shmagency problem, the Kantian reply, and explain the costs of that reply. The costs of that reply is that it requires a subject-dependent theory of knowledge, which can be provided by the Kantian tradition. Finally, I present the results by summarising why the three potential results of the shmagency problem debate, success of the critique, failure of the critique because of relativism, and failure of the critique because of subject-dependance, each require making distinct epistemic commitments. The shmagency problem demonstrates that the constitutivist approach cannot succeed unless the constitutivist adopts a relativist or subject-dependent theory of knowledge and each of these has its own costs associated with it. The relativist theory entails that objective normative facts can vary between subjects if those subjects are sufficiently different in their constitution, and the subject-dependent theory requires a Kantian theory of knowledge to establish universal objectivity founded in the nature of the subject.

1.1 The shmagency problem question and the debate between David Velleman and David Enoch

In §0.5 I provide an explanation of the shmagency problem that informs § 1. Here I provide a reminder of key elements I covered in §0.5, explained with reference to the exchanges between David Velleman and David Enoch in their respective publications discussing the shmagency problem. Velleman and Enoch disagree over whether asking the question ‘why be an agent?’ demonstrates that the constitutivist position is flawed or that this question does not make sense. Enoch argues that asking this question demonstrates that constitutivists cannot motivate the endorsement of agency while Velleman argues that the question itself is flawed.

As I explain in §0.5 Enoch argues that before we can endorse whatever follows from agency we must first be provided with a reason to endorse agency. Constitutivists argue that normativity is derived from an examination of how we are constituted while Enoch argues that any normativity derived in this manner is contingent upon whatever reason we have to endorse our own constitutions. Enoch’s point is that if constitutivism explains what we ought to do if we are agents, then something else must determine whether we ought to do what agency prescribes. This is how the shmagency problem question, ‘why be an agent?’, becomes the focus of the disagreement between Enoch and Velleman. Velleman argues that how we are constituted determines what we ought to do (see §1.2), Enoch points out that Velleman’s theory relies on our having a reason to endorse how we are constituted (see §0.5 for further detail than I have provided here), and Velleman replies by arguing that asking why we should endorse our constitutions does not make sense (see §1.4).

The purpose of the shmagency problem question is to demonstrate that constitutivism, on its own, does not provide a sufficient explanation of the source of normativity. It attempts to accomplish this by showing that constitutivism must refer to a source of normativity beyond what our constitution as agents can provide to answer at least some questions. The extent of this problem is summarised by Berteau (2013) in “Constitutivism and Normativity: a Qualified Defence” where he explains that:

“There is nothing about constitutivism that can demonstrate why we ought to be agents. But, insofar as we have no special normative reason to be agents, the standards constitutive of agency ultimately fail to provide us with a normative standpoint. Constitutive standards, thus, prove to be by themselves unable to issue normative requirements, namely, requirements we ought to follow on the basis of their being justified by virtue of agency itself.” (p. 84)

The nature of the problem is such that the supposed inability to answer the shmagency problem question undermines the ability of a constitutivist approach to answer *any* normative question. This is because the reasons we have to be an agent underwrite whatever normativity agency itself provides.

Velleman’s reply, explained in §1.4, to Enoch’s shmagency problem question is to argue that the question is flawed. Velleman (2009) argues that normative questions (questions that ask what

we should do) are types of questions that are asked by agents and that asking such questions assumes agency (pp. 142-144). This reply attempts to establish that normative questions require a particular type of context which establishes the criterion for a correct answer to the question being asked. This context is, according to Velleman, packaged with the question and required for the question to make sense. If Velleman is correct about this then Enoch's shmagency problem question requires that the appropriate context is provided before the question can be asked. Velleman argues that our agency is the appropriate context that provides the criterion for correct answers to normative questions (pp. 127-128).

Velleman's reply to Enoch's question is an attempt to demonstrate that Enoch's question does not make sense beyond the context of agency. The idea is that normative questions must be asked within the context of one's agency and, therefore, all normative questions can be answered by appealing to constitutive elements of agency. Velleman (2009) argues that the shmagency problem question ('why be an agent?') can either be answered on constitutivist grounds or does not make sense (pp. 142-144). This claim is central to the exchanges between Velleman and Enoch regarding the shmagency problem and constitutivism. Velleman's point is that if the shmagency problem question is asked in the context of being an agent then what is being asked is whether an agent should be an agent. Remember that, according to constitutivists, normativity is derived from what is constitutive of agency so asking whether an agent should be an agent means asking whether what is constitutive of agency prescribes the endorsement of agency. The argument, that normative questions require contexts that provide the criteria of correctness for the answer to the question being asked, becomes an argument that normative questions must assume agency in order for the question to have a context that is capable of providing the criteria of correctness. So, Velleman's response to the shmagency problem question is to argue that, if the question makes sense, then it is asking 'does what is constitutive of our agency entail that we should endorse what is constitutive of our agency?' rather than simply 'why be an agent?'.

Another way of explaining Velleman's reply (explored in further detail in §1.4) is in terms of the inescapability of agency. Velleman's argument that agency provides the context that normative questions require and, therefore, agency is inescapable for anyone wanting to ask normative questions. Agency is inescapable in this sense because normative questions do not make sense without what agency provides (that is, without a context that can provide the criteria for correct answers to normative questions). If Velleman is correct about the inescapability of agency, then Enoch's shmagency problem question ('why be an agent?') either can be answered by referring to agency (and, therefore, does not demonstrate that constitutivism cannot justify the normativity derived from agency) or the question is defective.

Enoch does not accept Velleman's argument that the shmagency problem question ('why be an agent?') is defective. Enoch (2011a) argues in "Shmagency revisited" that appealing to the inescapability of agency does not demonstrate that the shmagency problem question is defective (pp. 223-224). Enoch insists that Velleman's explanation that normative questions require contexts, such as agency, in order to make sense is not a satisfactory reply. This disagreement is

discussed in terms of the externality or internality of questions: whether these questions are being asked internally in the context of being an agent or externally of the context of being an agent. Velleman argues that asking any normative question beyond the context of agency (externally) does not make sense while asking the shmagency problem question within the context of agency (internally) allows the constitutivist to appeal to what is constitutive of our nature in order to answer the question. Velleman's point is that if the shmagency problem question is asked internally, in the context of being an agent, then the answer is trivial because it is determined by appealing to what is constitutive of agency.

Enoch's shmagency problem question ('why be an agent?') is not intended to be asked internally. At least, not insofar as asking a question internally means that the answer is determined according to the criteria prescribed by how we are constituted. If Enoch's question did have to be answered with reference to what is constitutive of agency, then Enoch's shmagency problem would be trivial. It would be trivial because it would have failed to demonstrate that the constitutivist position cannot demonstrate why we should endorse what follows from how we are constituted: if the shmagency problem question was merely asking about what our constitution has to say about whether we should endorse what follows from our constitution, then the question would not be fit for the purpose Enoch intends. Velleman hopes that this demonstrates that the question is either trivial or defective.

There is an exchange between Velleman and Enoch which is at the heart of their shmagency problem debate, demonstrates the importance of the shmagency problem question ('why be an agent?'), and outlines the disagreement that I have just explained. Enoch (2011a) makes the point that inescapability does not avoid the shmagency problem question when he argues that attacking the shmagency problem question has yielded a satisfactory defence:

"When the why-care-about-self-understanding question is understood externally, Velleman - rather than answering it - suggests that there's something wrong with the question. The suggestion is that such practical why-questions - requests for practical reasons - only make sense within some constitutive framework or another. Asking with the ambition of being understood outside any framework (agency, or even shmagency, or some other one), the question is supposed to be semantically defective." (pp. 223-224)

Enoch is replying¹⁰ to a particular point in Velleman's (2009) response to the shmagency problem where he writes:

"What the Kantian argues is that the criterion in relation to which guidance is possible must lie in the very nature of that which is to be guided. A question must establish criteria for what can count as a correct answer; if it fails to establish criteria for an answer, then it is not a fully constituted question. If "Why be an agent" isn't about a choice ... then you aren't owed an answer, because you haven't yet asked a question. ... Asking whether agency rather than *shmagency* is objectively correct would be like

¹⁰ Enoch cites this passage too, in the context of his excerpt above, but I have cited them separately to facilitate a more concise explanation to fit my purposes here.

asking whether a telephone is correct rather than a tree. Agency or *Shmagency* can be objectively correct as the solution to a determinate problem, or as the answer to a determinate question; but then the problem or question will invoke the criterion implicit in agency or the criterion implicit in *shmagency* (or some third criterion), by which one or the other can qualify as a correct solution or answer.” (pp. 144-145)

Enoch (2011a) does not agree that specific contexts, like agency, are inescapable for normative questions:

“Furthermore, it is very hard to see how the natural inescapability of agency can be seen as anything but normatively arbitrary, and so it is equally hard to see how it could help here. The discussion of dialectical inescapability misunderstands the nature of skeptical challenges (by committing the mistake of the adversarial stance [and assuming that showing a problem with the challenge results in defeating it]). And that we already do care about whatever it is that is constitutive of action - if indeed we do - is just neither here nor there.” (p. 228)

It is not clear whether this exchange establishes a resolution to the debate either way. In “Constitutivism and Inescapability: a diagnosis” Hanish (2016) references parts of this exchange when explaining that the shmagency problem debate has become fruitless, having been reduced to an exchange where “Velleman and Enoch charge each other with begging the question against the other regarding the possibility of a criterion of correctness” (p. 1158). While Velleman and Enoch do not reach a clear conclusion themselves, the exploration I provide reveals that their disagreement is a reflection of underlying epistemic disagreements that reach beyond the scope of the shmagency problem and prevent them from satisfactorily concluding their debate: see §§1.4, 1.5, and 1.8.

1.2 Velleman's constitutivism

Velleman (2009) argues in *How we get Along* that normativity is grounded in the intelligibility of action (p. 132-133).¹¹ When an autonomous agent undertakes deliberate action, they are doing so in order to become intelligible to themselves; they are attempting to make sense of themselves *to themselves* (Velleman, 2009, p. 32). So, when I am deciding what I should do, the correct method is for me to identify the reasons I have for action and then act in ways that are intelligible given those reasons. The source of normativity is grounded in the conception of 'action' as the deliberate attempt to make oneself intelligible with the reasons for action that one has.

The agent discovers this in what makes his actions intelligible to himself. Practical reason, the activity of making decisions and taking action, dictates intelligibility to oneself as the criterion for successful actions (Velleman, 2009, p. 136). For Velleman, 'success in action' means the successful constitution of the self: the use of one's autonomy to make oneself intelligible to oneself. In *The Possibility of Practical Reason*, Velleman (2000) argues that the constitutive aim of action is exercising your controlling consciousness to manifest an intelligible inclination towards your own autonomy (pp. 188-199). This is explained as a comparison to beliefs, where beliefs reflect your inclination towards the truth, actions reflect your inclination towards yourself:

A full-blooded action is therefore behaviour that manifests your inclination toward autonomy, just as a belief is a cognitive attitude that manifests your inclination toward the truth. ... My view is that your inclination toward the constitutive goal of action also mediates the influence of your reasons for acting, just as your inclination toward the truth mediates the influence of your reasons for belief. (Velleman, 2000, pp.196-197)

The purpose of action is to manifest your inclination towards your own autonomy. This means that, when undertaking action of the appropriate type, your goal is to enact your attempts to be the type of thing you think you should be. 'Action of the appropriate type' means action you have the appropriate opportunity to reflect upon because, as Velleman (2000) argues, intention is required for an action to be an action in the full sense: in the sense that it has the constitutive aim of action (p. 189). Attempting to be the type of thing you think you should be, the type of thing you *intend* to be, entails intelligibility because intelligibility is what follows from the attempt to be anything at all. Intending to be something at all is what makes you autonomous, and what you intend to be necessarily includes being intelligible.

The argument is that autonomy is constitutive of action, and intelligibility is constitutive of autonomy, therefore intelligibility is constitutive of action (Velleman, 2000, pp. 30-31 and 189). Having intentioned actions, at all, is to be seeking self understanding, in the sense that understanding your reasons for action and applying them to your actions *is* the attempt to understand yourself. This is the sense in which your agency is inescapable and an inherent,

¹¹ Velleman (2000) explains in "The Possibility of Practical Reason" that while his earlier works identify autonomy itself as the constitutive aim of action he now considers self-intelligibility the more plausible candidate (p. 30). As Velleman goes on to explain these ideas are linked, self-intelligibility is a particular requirement placed on autonomy because of the demand, for coherence, placed on ourselves by the nature of autonomy.

constitutive, feature of all of your full-blooded (that is, intentioned) actions. As Velleman (2009) explains:

[T]he aim of self-understanding is inescapable for you, and in two senses. First, it is naturally inescapable for you as a human being. As a human being you are naturally endowed with a theoretical intelligence, which is not a passive receiver of information but an active synthesizer, striving to make incoming information hang together so as to represent an intelligible world. You are also endowed with an objective self-awareness, a concept of yourself as a part of the world to be understood. These two endowments inevitably combine to yield the aim of understanding yourself, which inevitably motivates you to do what you can understand, whereupon you become a writer rather than a reader of your own behaviour. ... This brings me to the second sense in which the aim of self-understanding is inescapable: it is constitutively inescapable for you as an agent and hence as the kind of creature who can ask practical questions like 'Why should I have this aim?' If this is indeed a practical question, posed in the spirit of deliberation between options, such as those of adopting or rejecting an aim, then it must be resolved via the sort of reasoning that is practical, in the sense that its resolution is authored rather than discovered, written rather than read. The question must therefore be resolved, I have argued, via reasoning that aims at self-understanding. (p. 136-137)

This is the sense in which intelligibility is constitutive of autonomy and so constitutive of full-blooded action: deliberating between reasons *is* making oneself intelligible to oneself. Velleman's point is that attempts to analyze the process of action suppose, by the nature of the attempt, the aim of self-understanding and the task of self-understanding is the task of making oneself intelligible. So, when undertaking this analysis of action, one discovers that action itself is an attempt to manifest the reasons one has for action in an intelligible manner. What this means is that when you undertake full-blooded (intentioned) action you are trying to make the reasons you have for action coherent with the type of person you want to be (Velleman, 2009, pp. 31-33).

The perspective of an agent requires decision making and attempting to solve the problem of how to act. Agents must decide what to do, and when doing so, they are deciding what they are as much as what they are trying to do. They are deciding what they are because the perspective of an agent is a perspective of self understanding. Within that perspective, which is accessible to the agent who is trying to solve the problem of how to act, one discovers reasons for action and the criterion for a correct answer to the questions which stem from the problem of how to act. Velleman's (2009) argument is that the criterion for a correct answer to a normative question is determined by the question itself, because the question itself entails the perspective of an agent; to ask a normative question one must be an agent, taking the perspective of an agent, and for this reason, your constitution is provided at the same time the question is asked (pp. 133-138). It is because the aim of self understanding is constitutive of full-blooded (intentioned) action that normative questions and the criterion for a correct answer to normative questions are both provided by our own agency. It is in this sense that practical reason entails agency and agency entails normativity. Agency entails both normative questions, required to decide how to act, and the criterion for correct answers to those questions.

So, when an agent is trying to decide how to act they have, by taking the perspective of practical reason, both put forward a question, “how should I act?”, *and* the criterion for a correct answer: they should act in a manner coherent with the reasons they have for action. For example, if I am deciding what I want to do for the evening and I determine that, for the sake of my mental health and well being, I require comradery, I have a reason to spend time with friends, and to make my actions intelligible with this reason, I ought to contact friends in the pursuit of an evening socialising with them. I act on my reason (desire for comradeship) in this manner, because I have further reasons to believe I should meet my mental health needs. Together, the two reasons (understanding myself as someone who meets my mental health needs and requiring comradery to preserve my mental health) determine what I ought to do in order to be intelligible to myself. In this example, I identified the reasons I have for action and attempted to make myself intelligible, from my own perspective (to myself), with those reasons. This is why the source of normativity is found in what is constitutive of action, taking the perspective of an actor (a rational agent) entails providing the reasons for action, and what the actor ought to do is act in a manner intelligible with those reasons. We need the reasons for action in order to have something to make intelligible and those reasons for action are found in the perspective of the subject.

Velleman’s theory does not entail variation between agents who are in the same frame of reference. If two agents are in the same position, in the sense that they have the same reasons for action, the answers to the normative questions they ask will be the same.¹² As Velleman (2013) explains in *Foundations for Moral Relativism*, frames of reference are the contexts in which reasons “exert their weight” (p. 52). These contexts are parts of the statements and questions they relate to in the sense that they are constitutive of those statements. For example, as Velleman (2013) explains the point, in the same way that claiming ‘rocks tend to fall’ implies the context of gravity, normative statements imply the context of an agent’s constitution (pp. 51-52). So, the statement ‘you ought to be nice to your neighbour’ requires agency in the sense that one must be an agent to make this claim and particular reasons for action in the same way that the statement ‘a thrown rock will fall’ requires gravity in the sense that the context is required for the statement to be accurate and a body of mass to exert gravity’s force. Neither statement even makes sense without those frames of reference; the frame of reference is the context of the statement and that context is required for the statement to have a truth value (be right or wrong, or truth apt). This is how Velleman justifies the objectivity of normativity while grounding normativity in the nature of our agency, the answers to normative questions are objective in the context in which they are asked. Because the subject provides that context, their

¹² Assuming, of course, they are genuinely in the same position and asking the same question. We might imagine a scenario where two agents who are identical except for a three feet difference in height have different answers to the same normative questions. In such a case the question “ought I help my friend change the light bulb” would be different for each because the task in question is more difficult for one of the agents in question. The answer may still be the same, but this difference is relevant so the answer may be different. Assuming no such differences then a shared frame of reference (shared reasons for action) entail shared answers to normative questions.

agency *is* the context; the answers to normative questions only need to be true in that same context. Normative questions have objective answers, answers which are truth apt, in the sense that they have answers which follow from the agent's aim of action (self understanding), that is, answers which are intelligible with the agent's reasons for action.

Velleman (2013) argues that agents share underlying traits, human nature¹³, which generate reasons (pp. 49-69). While frames of reference vary, for example between different societies, the intelligibility of actions *once reasons are in place* does not. So, an agent will generate reasons from its nature based on its frame of reference and in doing so provide normativity in the form of the criteria for correct answers about questions that relate to how they should act. This does not entail that an actor will always succeed or that actors have always identified the correct reasons for their frame of reference. Rather, failures to act intelligibly and to identify the correct reasons for acting help to demonstrate the source of normativity and how it functions *by showing what it is to act or generate reasons incorrectly (irrationally)*. Velleman (2004) explains in "Willing the Law" that an agent is irrational when they do not possess the capacities and dispositions that are "essential to the activity of practical reasoning" (p. 24). If you identify the correct reasons and fail to act intelligibly, to yourself and in accordance with those reasons, you have acted irrationally, that is, you have failed to be coherent. If you fail to have the correct reasons for action, you have failed to *be rational*, *your capacities and dispositions* are irrational. This distinction is important for Velleman, because it allows him to explain the distinction between deficient agents and agents who are failing to constitute themselves intelligibly. If, through some deficiency of the brain perhaps, one simply does not have the reasons otherwise provided by human nature, this is not a case of acting irrationally, it is a case in which one is missing one of the requirements for practical reasoning. So, instances which appear to be examples of agents having a fundamentally different nature can be explained as merely examples of deficient agents rather than examples of some other legitimate alternative normativity that we ourselves might engage in.

The distinction between failing to act intelligibly with your reasons and not even having those reasons supports Velleman's theory, because failing to have the reasons that are a part of human nature is a defect. Velleman (2013) argues that the same reasons lead to different answers in distinct frames of reference, such as different cultures, because those frames of reference are different, not because the agents' natures are different (pp. 49-50). The natures of the agents are not different in the sense that practical reason is not different; agents deal with different problems and different contexts, but they all engage in practical reason and the task of self understanding. Velleman's point is that any deficiency in the nature of practical reason is not

¹³ This should not be confused with the claim that moral reasons exist in a manner which implies they are *separate* from an agent, each agent provides reasons according to their nature and while those reasons are provided within a particular perspective, and *only exist in that perspective*, separate perspectives will have commonalities underlying their reasons because of the commonalities that exist in their natures (Velleman, 2013, p. 62).

a failure *of* an agent but a sense in which one is failing to *be* an agent¹⁴. An inability to reason and the failure to do so correctly are distinct, argues Velleman, and the manner in which they are different is the type of evidence that is used to support his theory. As Velleman (2013) explains, the support for the foundations of his theory are observations as much as arguments (p. 45). The distinction between failing to understand yourself and being unable to understand yourself is an example of one of these types of observations: we observe that agents have to have particular capacities in order to actually be agents. So, according to Velleman, observations about our own nature and the nature of our reason (including what counts as an agent) provide supporting evidence for his theory¹⁵.

In summary, Velleman argues that the nature of an agent provides reasons for action and, in the process of doing so, dictates the criterion for a correct answer to questions about how the agent should act; therefore, the source of normativity is the nature of action itself, because action is the activity of making oneself intelligible with the reasons for action that one finds in one's own perspective as a subject. This is a constitutivist theory because the grounding of normativity, the source of answers to normative questions, is what is constitutive of action. The agent understands where normativity comes from and how to answer normative questions by understanding that the nature of action is the pursuit of coherently acting for the reasons for action that the agent provides.

¹⁴ Which is not to say that deficiencies entail that one is not an agent in an absolute sense. This can be a scalar matter rather than 'all or nothing'. If one's capacity for practical reason has been damaged then one's agency has taken damage, but that does not entail that one is not an agent (although, presumably, extensive damage that does reach this point is a possibility).

¹⁵ I suspect that this point reflects the Kantian inspiration from Velleman's earlier work. Similar to the process of transcendental apperception which grounds the Kantian approach Velleman is asking the reader to examine their own nature and the nature of their reason to provide grounding for his theory of normativity.

1.3 Why the shmagency problem applies to Velleman's constitutivism

Enoch argues that his shmagency problem demonstrates that a subject, such as a shmagent, could be so different from an agent that its constitution entailed a different normativity than the normativity which follows from agency. The significance of this is that even if constitutivism can justify normativity for *agents* that does not entail that this normativity is justified for shmagents. A constitutivist might explain, to an agent, why the answers to normative questions are found in the constitution of agency, and so justify those answers, but this approach cannot extend the justification to non-agents. For this reason the answers provided by the constitutivist approach, answers provided by appealing to one's constitution, are not suitably justified and, hence, not objective (truth apt). They are not suitably justified because the agent can question its own agency, by asking whether it ought to be an agent, and in that manner question the grounding of normativity provided by Velleman's constitutivist theory. The shmagency problem question, why be an agent, may still be asked by an agent *even if* they already have reasons for action and regardless of the manner in which those reasons for action were acquired. An agent may in this manner ask *about* those reasons which, according to Velleman's theory, are the source of normativity and constitutive of action. The answers to these questions, which are *about* those elements of an agent's nature that is constitutive of normativity, must appeal beyond what can be provided by Velleman's theory to provide an answer. The result is that Velleman has provided a story about how we derive normativity from the reasons which are constitutive of action, but Enoch's shmagency problem question asks *why* we should endorse those reasons, even if we accept that we have them. So, the agent may acknowledge reasons as Velleman describes them but still ask about hypothetical alternatives, shmagents who shmact instead of agents who act, and ask the normative question: 'ought I be one of those, a shmagent, instead of what I am?'.

Enoch's argument is that this hypothetical subject, the shmagent, could provide these alternative answers *even if* Velleman's argument, and his constitutive approach, is otherwise successful (Enoch, 2006, p. 178). The shmagency problem depends on a normative question which may be asked by the agent even if you assume the supporting claims underlying Velleman's theory. Even if you grant that an actor is attempting to act intelligibly to themselves according to criteria dictated by the reasons their nature has provided, *that same agent* may enquire as to whether this is how they *should* be; *any* type of subject with *any* type of motivations could still ask 'should I be what I am' (or, 'why be an agent?'). By any subject I mean any subject assuming they possess the required rational faculties to undertake rational inquiry. Given the deliberative nature of action in Velleman's theory it is fair to assume a robust faculty of reason. However, a reply related to this point will be put forward later in this paper in which I will argue that a deficiency of the shmagency problem question itself may entail that no creature with a rational faculty could intelligibly ask such a question, because it does not make sense.

The assertion underlying Enoch's argument is that, even if Velleman is right that we are agents, there is, also, a sense in which we are subjects who can suppose being something else. The distinction between the term subject and agent that I have just used demonstrates the key point

made by the shmagency problem and why it applies to Velleman's constitutivism. Whatever it is, exactly, that makes us agents, in the sense Velleman describes, it does not appear to preclude us from asking whether we ought to be agents. In this sense we are subjects first and agents second; we are thinking creatures with a perspective, and for that reason can ask normative questions *about the type of subjects we are*. We can ask those questions even if we do not know what it would be like to be another type of subject, even if we do not have a specific notion about what we would change or what it would be like to have changed elements of our nature. In this sense the, notional, shmagent can perform its function as the demonstration of Enoch's critique, even if it is a purely negative conception: the shmagent does not need to be a particular or concrete suggestion, it can merely mean *not* being constituted as an agent is constituted. Velleman provides a theory which argues that normativity comes from our agency, and Enoch criticizes this theory because there must be a reason to think that our agency matters in the first place. In this manner the shmagency problem question, 'why be an agent?', can be rephrased, for the purpose of explanation, to: 'if agency entails particular normative prescriptions, what entails that the normative prescriptions of agency are significant?'

When explaining the normativity of reasons, Velleman (2013) argues that providing the foundations for his normative theory requires explaining where the normativity of reasons comes from in a non-reductionist manner (pp. 49-50). Velleman's point is that there must be a story to tell about why any given reason prescribes in the manner that it does. It cannot simply be brute fact; it cannot *simply be the case* that reasons are normative. This anti-reductionist requirement is the reason the shmagency problem question, 'why be an agent?', is a problem for Velleman's theory. In this manner the shmagency problem, as it applies to Velleman's theory in particular, can be restated as: there must be a non-reductionist reason for us to endorse agency if we have reasons to endorse the prescriptions that follow from agency. This is a problem because the reason to endorse agency cannot appeal to agency and, hence, the normativity which follows from agency is contingent on something that is not grounded in agency. Furthermore, because the reasons to endorse what does follow from agency are found in whatever reason we have to endorse agency, the grounding of normativity is, in fact, whatever provides us with a reason to endorse agency rather than in agency itself.

In summary, even if the hypothetical alternative subject is completely impossible, the schmagent still illustrates that Velleman, by deploying the constitutivist maneuver, has derived a normative necessity from a non-normative necessity. The shmagency problem question demonstrates that the agent, the one asking the question, is capable of asking normative questions *about* what they are, even if they possess no ability to change what they are, and in demonstrating this capacity the shmagency problem critique reveals that there is a distinction between what is necessarily the case and what *ought* to be the case (Enoch, 2011a, pp. 220-223). Velleman's assertion that we provide reasons based on our frame of reference fails to establish that these are the reasons we *ought* to provide and this failure stands *even if* we grant that those reasons are ones we must provide. This distinction between what we *do in fact*, or even *must*, provide to our own perspective and what we *ought* to provide illustrates that there are some questions

whose answers are beyond the scope of what is constitutive of action or agency. There must be some reason *to be an agent at all* for what to be the case? .

1.4 Velleman's reply

Velleman's reply to the shmagency problem is that the variation between subjects, hypothetical or otherwise, is irrelevant when the term 'subjects' refers to non agents (such as shmagents). Velleman (2009) argues that Enoch's shmagency problem critique misunderstands the scope of normativity and the importance of supplying the criterion of correctness when asking a normative question (pp. 142-144). Normative questions are types of questions that are *asked about what an agent should do* and, for that reason, they are limited to the actions and perspective of agents. According to Velleman's reply, the shmagency problem question, 'why be an agent?', is an impossible question if it supposes you can somehow ask it without *first* being an agent and it is a trivial question if you ask it as an agent (p. 143).¹⁶ Because the criterion for a correct answer to a normative question is provided *by the agent* there simply is no correct answer to normative questions *without being an agent*; hence, any attempt to answer a normative question without invoking agency is simply a defective use of practical reason and any attempt to answer a normative question which *does* invoke agency can only provide normativity which is grounded in what is constitutive of the actions *of agents*.

The objectivity of normativity is not grounded in the same manner as objectivity for non-normative facts. Assuming, for the sake of argument, that a shmagent could not have different and simultaneously correct answers about non-normative facts, such as scientific facts, *does not* entail that the shmagent and agent cannot have different answers about *normative facts*. Velleman's argument, in reply to Enoch, is that objective normative facts *can* vary from subject to subject *if* they are fundamentally different types of subjects, such as shmagents and agents. Notice that Velleman's reply acknowledges the possibility of shmagents, this is where he deviates from the Kantian reply to the shmagency problem that I develop in §1.6. Velleman (2009) explains that the objectivity of normativity is grounded in the inescapability of providing the criterion for the correct answers to normative questions when engaging in the perspective of practical reason (pp. 138-140). Practical reason entails the aim of self understanding, which in turn entails asking normative questions *and* providing the criteria for correct answers to those questions. The type of objectivity normative facts have, according to Velleman's theory, is relative to the subject and, hence, it follows that altering the subject *does* (or, at least, can) alter the normative facts. Furthermore, the variance of normative facts, depending on the nature of the subject, does not challenge the objectivity of those normative facts because they are only objective, only truth apt, *in the context of the subject's perspective* and that perspective is determined by the subjects nature (by how it is constituted) Notice that, according to Velleman, this does not preclude the possibility of necessary similarities between subjects. For example, the relationship between action and normativity might be the same for all subjects in the sense that it always entails self-understanding even though the particulars of what follows from the goal of self-understanding may vary.

¹⁶ Velleman's point that Enoch asks an impossible question lays the groundwork for the Kantian reply to the shmagency problem I develop on Velleman's behalf in §1.6. Rather than develop this line of argument Velleman puts forward a relativist reply to the shmagency problem which I explain in §1.4.

So, even if the shmagency problem shows that normative facts, as they are described in Velleman's theory, cannot be objective in the same sense as non-normative facts, this is not a problem for Velleman. It might be the case that Enoch's shmagency problem identifies that non-normative facts cannot be both objective and grounded in what is constitutive of action; because, for example, a relationship between the facts and the external world entails some external elements in the grounding of the facts. Enoch might have established that non-normative facts, in some sense, come from the external world. Which is to say, because of the way the world is the correct answers to at least some types of questions must be grounded to at least some extent in what that external world is like. The accuracy of this depiction of non-normative facts is not important to Velleman's reply and is not intended to represent Velleman's position on that issue, it is presented to explain the distinction between non-normative and normative facts. The point is that Velleman's theory establishes objectivity only for normative facts and this does not require taking a position beyond that scope. So, claiming that normative facts can differ from subject to subject entails, strictly, that this is true for normative facts and it is not intended to extend to any similar claims about non-normative facts such as 'scientific facts'. Normative facts have their own nature and their own type of objectivity; the shmagency problem, according to Velleman's position, falsely assumes that objectivity for normative facts is similar to objectivity for non-normative facts.

If Enoch's shmagency problem demonstrates that non-normative facts cannot be both objective and grounded in what is constitutive of action, it does not follow that *normative* facts cannot be objective and grounded in what is constitutive of action, because objectivity can mean different things for normative facts than it does for non-normative facts. In the case of normative facts, objectivity means that normativity is established *by what is constitutive of agency* and so is *only true for agents*; grounding normativity in agency entails that the objectivity of normativity extends to subjects that are agents, not shmagents, and justifying the correctness of answers to normative questions to those who are not agents, such as shmagents, is not required because "once we have established that an aim is constitutive of agency, we must expect it to be solely self-justifying" (Velleman, 2009, p. 142). The expectation, crucial to the shmagency problem critique, that the shmagent having different answers to normative questions than the agent is a problem merely demonstrates that Enoch and Velleman are referring to different things when using the term 'objective'.

An independently stable shmagent is simply irrelevant to normativity for agents. If an agent were to consider whether they should be an agent or a shmagent, they could only do so according to the criteria for correct answers provided by their agency. So, we are not subjects first and agents second when it comes to normativity. Normative questions are limited to those questions for which the subject can provide the criterion for a correct answer. However, *even if* the shmagent were an alternative type of subject capable of providing criteria for correct answers to normative questions, this alternative would be irrelevant to the agent. As Velleman (2009) explains this hypothetical possibility, the shmagent, would provide shmnormals in a somewhat similar manner to how the agent provides morals: so the agent makes choices while the shmagent makes shmchoices, they are different but not in some untenable epistemic conflict (p.

143). In such a hypothetical example the shmagent would represent a stable alternative to agency which would result in “two independently stable conditions” but this is simply not a concern to the agent (pp. 142-144).¹⁷ There is a sense in which only the agents “independently stable condition” relates to normativity. This is the sense in which the force of normativity is *for agents*. The shmmorals that relate to the shmagent would be *shmnorms* rather than norms because they come from shmagency. In this sense the shmagent does not deal in normativity at all, it deals in *shmnormativity*. However, this categorisation of shmnormativity as distinct, because of its foundations, from normativity does not alter Enoch’s claims that the shmagent has a competing set of prescriptions for action that are derived from its constitution. Shmnormativity is equivalent to normativity in the sense that Enoch requires it to be: both prescribe reasons for action that one might endorse given the appropriate constitution. The agent, *because it is an agent*, must deal in reasons, while the shmagent deals in shmreasons and the existence of one does not entail a problem for the objectivity of the normative facts of the other because the objectivity of each is isolated to the type of subject they are: shmagent objectivity is for shmagents and agent objectivity is for agents, neither entails a claim to normative knowledge that extends to the other.

¹⁷ I would like to thank Velleman for access to an unpublished manuscript where he explains this point further (*The two normativities*, forthcoming, p. 15).

1.5 The cost of Velleman's reply

Enoch (2011a) describes the results of the shmagency problem in terms of "score keeping" (p. 227) and argues that the shmagency problem debate has failed to demonstrate that how we are constituted is "anything but normatively arbitrary" (p. 228). Enoch's argument is that the constitutivists, and Velleman in particular, have to either explain why the shmagency problem question cannot be asked, in the external sense, or why we have an external reason to endorse agency. Enoch has identified the problem that constitutivism entails that a justification which is not grounded in agency cannot be demanded without first assuming either agency or the framework of some constitution. Enoch's score keeping approach is an appropriate method for representing the results of the debate because Velleman and Enoch have different ideas about what counts as a problem for their respective positions. In this sense, the implications of Velleman's reply are a cost that Velleman is willing to pay, or are not even viewed by Velleman as a cost, while Enoch considers those same costs unacceptable. Furthermore, implications of Velleman's theory which Enoch considers costs are, from Velleman's position, the same points that make his theory plausible. For this reason, it is helpful to present these implications as 'costs' to identify that Enoch considers establishing that these are implications of Velleman's theory a success of the shmagency problem debate.

I disagree with Enoch's (2011a) point that "no convincing reasons have been given for why we should reject" normative questions external from the framework of agency (p. 228). I disagree because Velleman (2009) directly addresses this point and explains why, and in what sense, normative questions cannot be asked externally from some framework of constitution: his argument is that 'normative questions' *means* questions asked relative to some framework, because the criteria for correct answers about normative questions are the frameworks within which they are asked (p. 143). Velleman's point, as explained earlier, is that normative questions *cannot* be asked externally from the framework of agency: to do so would be to ask a defective question. I agree with the sentiment underlying Enoch's point, which is that having to take the stance that the shmagency problem question does not make sense is a cost of Velleman's theory. It is a cost because the reason Velleman gives to convince us that the shmagency problem question cannot be asked without assuming the agents framework of constitution is essentially a restatement of his theory.

The reason Velleman gives to convince us that the shmagency problem cannot be asked externally from the framework of agency had to be a restatement of his theory, because the purpose of his theory is to explain the grounding of normativity. The shmagency problem asks a normative question, 'why be an agent?', and the constitutivist must refer to our constitution to provide an answer to that question. The constitutivist must refer to our constitution, or at least some constitution, when responding to the shmagency problem question because *the point of the constitutivist approach is to explain normativity by reference to our constitution*. For this reason, the shmagency problem does demonstrate that constitutivism is, in this sense, circular.

However, it is not clear that this circularity is a problem. If our constitution, and the task of self-understanding, is a compelling grounding for normativity, then circular answers to normative

questions may be an acceptable price to pay. Velleman's reasons for thinking that this is an acceptable price relate to the nature of the objectivity he intends to establish for normative facts. Velleman's reply requires that objectivity about normative and non-normative facts is, in some meaningful sense, distinct. Objectivity about normative facts *can*, at least hypothetically, lead to different truths between subjects. Although normative facts for agents cannot differ in this manner, normative facts for other types of subjects, non agents, may provide *completely different* answers to moral questions *even in identical circumstances*¹⁸ without this variance threatening the objectivity of the moral claims made by either type of subject. Enoch's point is that Velleman's (2011) claim that one cannot ask normative questions without prescribing to a frame of reference, "within the framework of some constitution" (p. 143), appears to be an implausible claim which Velleman is required to make in order to defend his theory from the shmagency problem.: Hence, this claim is a cost of Velleman's reply to the shmagency problem. Velleman makes this claim in order to establish that asking the shmagency problem question *without* assuming either agency, shmagency, or some type of subjecthood is nonsensical. Velleman needs to deny that a subject can ask normative questions *without* appealing to what is constitutive of their nature, because the notion of a subject asking a normative question *externally* from their own nature is incompatible with his theory. Enoch (2009) argues that Velleman has failed to establish that this type of question can be asked:

If, as I suggested, apparently making sense is strong *pro tanto* evidence of making sense, the dialectical situation is not symmetrical. The burden is on Velleman to show some countervailing reason, some reason to believe that appearances here are misleading, and that the external question that appears to make sense in fact does not. (p. 226)

While Velleman provides supporting reasons to justify his claim that normative questions do not make sense without referring to agency (or some framework which is constitutive of the nature of a subject), the supporting reasons he gives *are his constitutivist theory*. Because Velleman's constitutivism entails that Enoch's shmagency problem does not make sense, insofar as it entails asking a question outside of your own constitution, it has conceded the point to Enoch as much as it has provided a defence. Velleman's reply deploys *the same theory he is defending* to explain why the problem he is replying to is either not a problem or does not make sense, which puts his defence in the position of relying on the plausibility of the same points which required the defence. Therefore, the point of contention is whether the question, 'why be an agent?' asked *without assuming agency or an analogous framework of reference*, makes sense and because of that the plausibility of this question making sense becomes the plausibility of Velleman's theory.

Another way of saying this is that the shmagency problem question, 'why be an agent?', is only as much of a problem as the notion of asking a question which is external from agency. If asking

¹⁸An alternative way of stating this claim would be that agents and shmagents simply cannot be in identical circumstances because *being an agent* is a relevant element of the circumstances which pertain to any moral claims. However, I do not think Velleman is committed to this stronger version of the claim: it may be desirable to make the claim in this manner but it is not necessary in order to put forward Velleman's reply to the shmagency problem.

a normative question without the framework of some constitution is a plausible notion then the shmagency problem question is a demonstration of why Velleman's theory is not plausible (strictly to the extent that the notion of such a question is plausible). However, if asking a normative question without the framework of some constitution is not a plausible notion the shmagency problem question is an example of a question which does not make sense. Crucially, Velleman provides an answer which is consistent with his theory when faced with the shmagency problem question: Velleman replies that the question itself does not make sense *because of the implications of his theory*. This is a cost only insofar as the plausibility of the question making sense is more potent than the plausibility of Velleman's theory. If one finds Velleman's theory convincing, the fact that it explains *why* the shmagency problem question does not make sense is an advantage of the theory: it is an example of the theory explaining what requires explaining¹⁹. If one finds Velleman's theory unconvincing, the fact that it does not provide any new information when replying to the shmagency problem question may appear, like it does to Enoch, to be the theory failing to provide a reason to change your mind. In either case, the shmagency problem debate has clarified the points of disagreement and in that sense aided the reader in deciding which position is more compelling; although it does not appear to have provided a conclusive argument one way or the other.

Enoch can now reframe his critique in the style of his "argument from objectivity's implications" (2011b, p. 16-49). Velleman's reply entails both that asking a normative question requires agency, or an analogous framework of reference which supplies a constitution from which normativity can be derived, and that the objectivity of normative facts is compatible with varying constitutions, even if such variances are merely hypothetical, providing varying normative facts. Enoch argues that taking this position is cost enough, but I contend that a different argument, the argument from objectivity's implications that Enoch provides in "Taking Morality Seriously A Defense of Robust Realism" is capable of being deployed against Velleman's position in response to Velleman's reply. Enoch (2011b) argues that subject-dependent theories are not plausible because they require depending on the responses of subjects to provide answers to moral questions which results in a problematic variety of answers to questions which can only plausibly have one correct answer (pp. 15-49). Given that Velleman's reply to the shmagency problem entails that subjects with differing constitutions (such as shmagents) can generate different normative truths, Enoch's argument from objectivity's implications is *almost* a suitable reply to Velleman's constitutivism.

Enoch's argument from objectivity's implications is an argument directed at moral relativism in general, which is why it applies to Velleman's constitutivism. Because normativity, as established by Velleman's theory, is relative to the constitution of the subject (its frame of reference) it is an appropriate target for the argument Enoch uses against relativist theories. Velleman will, of course, not view being the target of Enoch's argument against moral relativism as a cost: it will not bother Velleman that his theory is an appropriate target for an argument

¹⁹ Rosati (2016) puts forward a similar reply in "Agents and "Shmagents": An Essay on Agency and Normativity" where she argues that Enoch's critique fails to explain why the constitutivist cannot merely appeal to the constitutivist theory to justify agency (pp. 203-204).

against moral relativism because his theory is a relativist theory. As a relativist theory Velleman is not trying to establish the same type of foundations or grounding for morality that Enoch is dealing in (see §0.3 for further explanation), so Enoch's argument from objectivity's implications is not going to concern Velleman. Enoch's argument from objectivity's implications establishes that it follows from relativism that answers to moral questions can vary between subjects: furthermore, establishing this is key to the arguments critique of relativism. As I discussed, in Velleman's reply, Velleman actually agrees with this point: it *does* follow from Velleman's theory that the answers to moral questions can vary between subjects, but only *if* they are different kinds of subjects in a sense that entails they have a different frame of reference (such as shmagents and agents).

Caroline Arruda (2016) argues in "Constitutivism and the Self-Reflection Requirement" that Velleman's constitutivism entails only weak normativity in the sense that his theory only entails a type of "non-moral pressure to consider the kinds of motives and reasons that inform one's actions in light of one's non-moral aim to be an autonomous agent" (p. 1176). Arruda's point is that Velleman's theory "has no obvious stake in the debate about metaethical constructivism" (p.1176). This is true for the same reason that his theory is subject to Enoch's argument from objectivity's implications, and for the same reason being subject to this argument is not a problem (a cost) as far as he is, or needs to be, concerned: Velleman has no stake in the shmagency problem in the sense that his theory is not trying to construct objectivity in the sense that Enoch is critiquing. Even if Enoch succeeds in establishing that constitutivism fails to ground objectivity, in the sense that Enoch understands objectivity, this is not a concern for Velleman because the type of objectivity he is attempting to ground is different than the type of objectivity Enoch is dealing in. Velleman is claiming constitutivism grounds normative facts that are truth apt *for agents* while Enoch is critiquing constitutivism for failing to establish normative facts that are truth apt *full stop* (or, truth apt for all subjects).

Velleman's theory is response-dependant in a manner incompatible with Enoch's objectivism because the two philosophers mean different things by the notion of objective normativity. Because the debate between Velleman and Enoch results in competing assertions about the plausibility of being able to ask a normative question without relying on what is constitutive of agency (or shmagency), advancing the debate further requires moving beyond the shmagency problem, as such, and discussing the nature of objectivity directly. The closest Enoch comes to providing an argument that directly threatens Velleman's understanding of objectivity is his argument from objectivity's implications, which is why I contend that it is *close* to a suitable response to Velleman's reply to the shmagency problem. I do not think Enoch would endorse applying this argument as it stands, because the argument from objectivity's implications utilises the variation of answers to normative questions between *actual* agents and the shmagency problem requires only variation between *hypothetical* agents. However, insofar as Enoch is required to provide further supporting argument against the plausibility of Velleman's claims, he can do so by arguing, as he does in the argument from objectivity's implications, that a definition of objectivity which facilitates different responses from different subjects *merely because of*

those subjects' differences fails to meet the expectations we have for what constitutes objective fact.

In summary, Velleman is unlikely to view the commitment to his relativist foundation for normativity as a cost; it is a feature of his theory. The cost of Velleman's reply to the shmagency problem is that it entails that the shmagency problem question does not make sense and that objective normative facts may differ between sufficiently different subjects. The plausibility of these claims undermines the plausibility of Velleman's position only insofar as the claims themselves are not plausible (Enoch, 2011a, pp. 227-228). Essentially, the cost of Velleman's reply to the shmagency problem is that his theory is a relativist theory,. so, it is no surprise that Enoch terms this a cost while Velleman does not. Velleman (2013) argues in that there are reasons to wonder whether he is a relativist or something else (p. 63). This allows Velleman to attempt to assert objectivity and relativism simultaneously: the variance of normative truth between subjects with different constitutions allows Velleman to deal in objectivity on the one hand, with *correct* answers which are 'objective' within the scope of particular reasons found in the constitution of agency, while appealing to relativism on the other. Velleman argues that relativism is supported as much by observations as by argument (2013, p. 45). What Velleman means is that his constitutivist theory is an observation of how normativity works that demonstrates norms are relative to constitutive elements of our nature. Velleman's claims about the nature of the objectivity of normative facts and the types of normative questions which make sense are plausible in the sense that they explain the way normativity functions. It is *because* normativity only makes sense in the context of our nature and *because* drastically altering that nature would alter the moral facts along with it that Velleman's theory is plausible. At least, that is the claim and, hence, the costs of Velleman's reply to Enoch's shmagency problem serve as much to undermine its plausibility by forcing it to make such claims as it does to *support* Velleman's theory by demonstrating that such claims follow from it. These are two different methods of making the same point, from both Enoch and Velleman, which is that the plausibility of Velleman's theory is dependent on the plausibility of his claims about objectivity.

1.6 An alternative, Kantian, reply

The result of Enoch and Velleman's shmagency problem debate is a disagreement about the plausibility of particular notions of objectivity and the objectivity of normative facts. Kantian constitutivists offer an alternative reply to the shmagency problem. A Kantian constitutivist is not required to adopt a relativist conception of the objectivity of normative facts in order to solve the shmagency problem. By taking a Kantian approach, a constitutivist can provide a foundation for objective normativity that is truth apt in all cases, that is, in the same sense that non-normative claims are objective. The Kantian reply to the shmagency problem is that the shmagent is impossible because the shmagen is beyond the scope of the concepts of the understanding, which is to say, the 'position', or constitution, of the shmagent is strictly inconceivable. While Velleman's reply to the shmagency problem is to appeal to a notion of normative objectivity that is limited to a particular type of subject, one constituted such that it an agent, the Kantian does not concede that another type of subject is possible. By appealing to a Kantian theory of knowledge and facts in general, rather than appealing to a notion of objectivity which applies only to normativity, the shmagency problem can be solved without claiming that altering the nature of the subject can alter moral facts. A Kantian theory of knowledge justifies the claim that there are *at least some* elements of our nature which cannot be altered and even the prospect of doing so is a nonsensical notion. Because it is *the same unalterable elements* which are constitutive of agency, and therefore ground normativity as per the constitutivist approach, the shmagent is impossible and the shmagency problem question ('why be an agent?') is nonsensical. This alternative approach is not what follows from Velleman's theory, his own reply explains what follows from that, but it is what could follow if he was not willing to concede that moral truths are contingent on a nature that could, at least hypothetically, be otherwise. If, as Enoch suggests, Velleman's position that normative objectivity can allow for differing normative truth between subjects is a cost of his position (and renders it implausible) then the constitutivist is still left this Kantian reply which does not incur this cost.

(However, there are at least some broad costs to Velleman's position were he to alter it so that he could deploy the Kantian reply to the shmagency problem. The Kantian reply is consistent with Velleman's (2013) claim in "Foundations for Moral Relativism" that human nature is the source of convergent moral attitudes (p. 56) and his (2009) claim in that how we are constituted is the source of normative truths which are objective (p. 139). This reply is not consistent with his denial that there are "necessary moral norms of any kind" (Velleman, 2013, p. 64); but, it is consistent with the supporting claims which lead to Velleman's foundations for that claim, such as his assertion that there are aspects of interactions between agents which require that their moralities facilitate shared moral truths and that their nature entails only limited types of divergence from one another across societies (2013, pp. 45-69). This alternative reply is a fundamental deviation from Velleman's position because it posits a different definition of objectivity for normative truths. However, despite this deviation it is worth considering in the context of his position because the results remain consistent with the bulk of his claims and arguments; or, anyway, they preserve what could be preserved while avoiding the costs of his reply to the shmagency problem.)

The Kantian reply that I put forward is distinct from Velleman's, however he does put forward a related line of argument in "The Two Normativities" (forthcoming) where he argues that because the shmagent is a differently constituted kind of subject, than the agent, it deals in a different type of normativity (if it deals in any normativity at all). So, while the agent deals in morals because those are the normative claims which are objective in the agent's frame of reference, the shmagent deals in shmorals, because if any normative claims are objectively true in the shmagent's frame of reference, they would not be morals. Velleman concedes that a shmagent is, at least hypothetically, possible but argues that shmagents cannot have *reasons* from which they can derive morals but must instead have *shmreasons* (forthcoming, p. 15). Velleman's point is that these shmreasons may lead to a coherent state of affairs, a coherent 'normativity' (or, something like normativity: the shmagent equivalent) may be derived from them, but this independently stable condition (this coherent normativity) is irrelevant to the morals of the agent because agents *only* deal in reasons and the shmagent's state of affairs is supported by *shmreasons*.

The alternative Kantian reply to the shmagency problem is to extend Velleman's point about shmagents and shmreasons to objective claims in general. Rather than acknowledging that a subject, such as a shmagent, could hypothetically be in a coherent, independently stable, condition which generates normativity from shmreasons, the Kantian argues that because elements of agency provide the grounding for *all* claims and this includes normative claims, the shmagent cannot have any normativity at all. The point is that normativity is grounded in what is constitutive of agency because what is constitutive of agency grounds *all claims*. So, it makes no sense to talk of a shmagent who has an alternative normativity because if a subject stopped being an agent it would have no grounding for any claims at all (normative or non-normative). Furthermore, it cannot be said that the shmagent's position could be coherent or independently stable, because making any claims *including those regarding coherence* requires agency. So, the shmagent cannot be *anything* by the measures of an agent and, hence, any statement about the sensibility of a shmagent's position must carry the 'shm' prefix to communicate this: the shmagent cannot generate normativity from shmreasons in an independently stable condition, it can only generate shmnormativity in an shm independently shmstable shmcondition.

The key claim underlying the Kantian reply is that all knowledge requires grounding in elements of the agent, so the agent is a prerequisite for knowledge. Velleman's reply to the shmagency problem is a result of grounding the objectivity of *normativity in particular* in the constitution of agency without extending that grounding to all knowledge. However, in *Critique of Pure Reason* Kant (1781/1787/1996) grounds *all* knowledge and the objectivity of *all* claims in what is constitutive of agency: or, phrased more closely to his own terms, in some of the elements of what our mental faculties provide (Bxvii-xix). Carl Posy (2010) explains the necessity of agency for all claims in "Man is the Measure":

[F]or Kant, there is no standing outside, and there is no distance between a self and its experience. The only notion of self this allows is the network of expectations involved in each frame and the fulfillments of those expectations. A conscious state can be ascribed to a subject only insofar as it is the fulfillment of prior imagined projections. So: No

coherence, no network, then no subject, and no subjectivity. The coherence of the self's states - a regulative, progressing coherence, to be sure, like that of the world - is tantamount to there being a self at all. (pp. 121-122)

Understanding is strictly tied to the subject, there is no "standing outside" *all* elements of the self because some of those elements are what provide knowledge. The Kantian theory of knowledge entails that knowledge means something that is constructed by agents and, hence, the role of the subject is tied to the objectivity of claims without exception. For this reason, agency is the underlying assumption inherent in all claims; to claim any knowledge at all is to acknowledge and depend upon your agency²⁰.

For Kantians understanding is grounded in our constitution in the sense that our faculty of understanding provides the categories that we need to have knowledge at all. The necessity of our faculty of understanding to this process is Kant's (1787/1996) Copernican revolution, with which he begins his theory of knowledge on the assumption that knowledge, as such, *must* be provided by faculties of our mind (B xvii). Kant argues that he completes the project of metaphysics by committing to the assumption that the world must conform to our cognition and that elements of our cognition must be *necessary* and, because of that necessity, they are objective. It is in this sense that concepts and knowledge are real in the Kantian tradition. Concepts, and all objects, are real in the perspective of the subject, and because of the nature of our access to the world, could only be real in this sense, and any notion that things could be otherwise is an attempt to reach beyond the scope of knowledge (conjecture about what cannot be known or understood). As Kant (1781/1787/1996) argues in the transcendental aesthetic, experience exists as the construction of subjects and even the most necessary of concepts "cannot exist in themselves, but can exist only in us" (A 42, B 60). Posy (2010) explains that the role of the subject grounds both the nature and limits of knowledge: "[m]an - the fabric of human knowledge, its extent, and its limits as receptive - forms the measure not only of ourselves and of the very notion of subjectivity, but of our world and of the objects in it" (p. 122). This is how Kant understood the relationship between knowledge, objectivity, and agency. Now, notice how this relationship between knowledge, objectivity, and the subject can be imported into the shmagency debate by pointing out that subjects with fundamentally different constitutions than agents are impossible. Our constitution provides the grounding for knowledge and it is objective because we must necessarily provide the grounding that we do; hence, because our faculty of understanding is the grounding for knowledge it is inconceivable that it could be otherwise.

According to this Kantian reply, Enoch's shmagency problem results in broad skepticism because it requires notions beyond the scope of the categories: in Kantian terms the shmagent is essentially a hypothetical entity from the noumenal realm. Because the question 'why be an agent?' is external to agency, it cannot be within the scope of knowledge, it must be beyond that scope and instead in the realm of things which exist independently of us: this is the noumenal realm and we cannot have any knowledge about it. It is the categories, concepts, which are

²⁰ Kant (1787) makes this point where he argues that the original synthetic unity of apperception entails that the 'I think' is attached to both all artifacts of sensibility *and to pure apperception* (B132).

required for knowledge and limit the scope of knowledge. The categories also ground objectivity because they are what make claims objectively true. However, while it is the categories that provide this function it is the subject which provides the categories. At the epistemic and metaphysical level, regarding the nature of knowledge and our access to the world, the subject is those elements of ourselves which provide the categories (concepts).

Considering an alternative to your own agency (shmagency) is not just, as Velleman argues, a consideration beyond the scope of normativity; it is also a consideration beyond the scope of knowledge. Because the subject is a prerequisite for knowledge, asking ‘why be an agent?’ is analogous to asking “why know things?”. Abandoning agency entails abandoning knowledge claims and, hence, the hypothetical shmagent has *no knowledge whatsoever*. So, the constitutivist is no more threatened by the shmagency problem than any position is threatened by skepticism regarding the possibility of knowledge itself. Even if one concedes that the skepticism may be warranted, that is, that there may be good reason to critique a Kantian theory of knowledge in particular, it is a problem of epistemology and, as such, must be resolved in that context. The problem is not with the constitutivist approach, as the shmagency problem argues, but (if it is anywhere) the problem is with the Kantian theory of knowledge because Enoch’s problem is with knowledge, as such, grounded in how we are constituted - not with normativity in particular.²¹

²¹ Karl Schafer (2019) makes a similar point in “Kant: constitutivism as capacities-first philosophy” where he explains that Kantian constitutivism is, at its foundations, not trying to answer the question “why be moral?” but instead is trying to demonstrate what follows from the capacity of reason (pp. 2, 13). My point is that because the shmagency problem question does not successfully target the constitutivist approach, as such, and instead targets the epistemic foundations of that approach it is not clear that the shmagency problem is fit for its intended purpose. In his article Schafer puts forward a similar line of argument to the Kantian reply I present here (the same idea, differently presented); I am attaching this footnote to acknowledge the similarities and to point out that I developed my article prior to my reading of his article (and prior to the publication of his article): we developed the same line of argument independently.

1.7 The cost of the Kantian reply

Constitutivism inherits its plausibility, or implausibility, from the Kantian tradition if it replies to the shmagency problem in the manner I have just outlined. If the reason the shmagency problem fails to undermine the constitutivist claim is because the question is nonsensical, and the reason that the shmagency problem question is nonsensical is because it is incompatible with the Kantian theory of knowledge, then the shmagency problem has only been solved in the context of the Kantian theory of knowledge. If Kantian epistemology has unacceptable problems, then the solution it provides to the shmagency problem will also be unacceptable. The Kantian solution I have provided refers to knowledge as something which requires a subject to provide the faculty of reason, hence this reply is inseparable from the Kantian tradition. This means that the cost of the Kantian reply to the shmagency problem is whatever problems come with the Kantian theory of knowledge²².

Velleman's (2013) denial "that there are universal norms of any kind, and that there are necessarily ubiquitous norms of morality" (p. 64) is incompatible with the Kantian response. The Kantian theory of knowledge grounds objectivity in universal and necessary unities constructed by the self (Kant, 1787/1996, B 141-143). These necessary unities are, in the case of normative facts, moral law, and they are necessary in the sense that they are the universalizable explanation of the reasons we have for action. In the empirical world the agent constructs necessary unities in the form of laws, which explain the actions of objects in the physical world, and moral laws are the same, in the sense that they are necessary unities which explain what we ought to do. Objectivity means the same thing for normative and empirical facts: in both cases it refers to *necessary* explanations which are *universalizable* because they can explain all relevantly similar cases. Posy (2010) explains this type of Kantian relationship between normative and non-normative facts:

[T]he formal unity of that world (what Kant calls the "moral law") - like the unity of the empirical world - is tied to objectivity. In this case it is the collection of objective maxims that do or would pass the universalization test. (p. 124)

The necessity and universalizability of objective unities, laws, created by the subject is the source objective facts (normative and non-normative), which is inconsistent with Velleman's relativist foundations but *it is not inconsistent with his subject-dependent claims*.

The inconsistency between these Kantian foundations and Velleman's relativist foundations does not entail an inconsistency between the Kantian foundations and Velleman's subject-dependent claims, because the subject is the source of normativity in both cases. For the Kantian, the subject is the source of normativity because what the subject provides to the process of experience creation, the categories (concepts), is the source of *all* objective facts. As Posy (2010) explains, for Kant the subject is the source of objective normative facts:

My moral self is given by the nexus of near and further goals that place me in the moral world. Indeed, objective justification of an act places me as part of the unity of the moral

²² The costs I explore are related to this point, difficulties which result from adopting the Kantian theory of knowledge, but the broader problems associated with the Kantian tradition will not be developed further. The point I intend to make is strictly that those costs are incurred by this reply.

world just as judging objectively about an event puts me in tune with the causal unity of nature. So, if one thinks in this way we have again a reciprocity of self and world. Those things in the world which are parts of my projects are in fact parts of my self. (p.124)

The objectivity of normativity is grounded in the nature of the subject for both Kant and Velleman, this does not change when Velleman's relativist foundations are replaced with the objectivity of the Kantian theory of knowledge. Where Velleman (2010) explains that subjects provide the criterion for a correct answer when they ask normative questions, Kant's position entails that "action is tied up with attaining an imagined goal, and the moral law simply codifies those goals for which we may objectively aim" (pp. 135-138; Posy, 2010, p. 124). In both cases it is what is constitutive of the subject and its relationship with action which provides the source of normativity and its grounding. So, while adopting the Kantian reply would cost Velleman's theory its relativist foundations, this cost does not extend to the role of human nature and the subject; despite this foundational divergence the Kantian theory of knowledge is compatible with the majority of Velleman's claims about the source and foundations of objectivity.

(Velleman's (2013) claim that observations about the relativist nature of normativity provide support for his theory are inconsistent with the Kantian reply because he argues that these observations entail incompatible moral norms and the lack of universal moral facts (p. 45). However, while relativist claims are not compatible with the Kantian reply, the role of the subject in the Kantian theory of knowledge supports many of the claims that follow from Velleman's relativism, such as ubiquitous morals shared across cultures arising from human nature, variations in social and cultural norms counting as relevant differences for moral considerations, and the conceptually central role of reasons for action which are derived from the nature of the subject itself (pp. 45-69). The point is not that Velleman's theory survives unaltered by deploying the Kantian reply to the shmagency problem. Rather, the point is that subject dependance survives despite the relativist foundations being incompatible, furthermore many of the claims are similar whether founded on outright relativism or on subject dependance. Subject dependance, objectivism, and realism are all compatible, especially in the context of the Kantian theory of knowledge: the subject provides the categories (concepts) which are objective, and their role in experience creation makes them real. The shmagency problem marks a point of epistemic contention (a contention about what normative facts are) where a constitutivist such as Velleman may adopt *either* a relativist or objectivist position.)

The Kantian reply requires deriving normative necessities from non-normative necessities. Because the Kantian theory of knowledge entails that conceptual necessity (necessary application of the categories) is the source of objectivity, the objectivity of *normative* facts is grounded in *conceptual necessity*. As I explain in § 0.5 the shmagency problem demonstrates that normative necessity cannot be derived from non-normative necessity because the fact that something *is* the case, even necessarily, does not entail that it *ought* to be the case. So, the Kantian reply appears to incur the cost of claiming that normativity is grounded in the necessary nature of the agent *regardless of whether that nature ought to be as it is or not*. My Kantian reply has derived an endorsement of normativity from how we are constituted: this is a problem

because I appear to have derived a normative prescription from a factual statement (an ought from an is).

This particular derivation of an ought from a factual statement is not problematic because there is no sense in which an alternative (hypothetical or otherwise) to agency is possible.²³ The shmagency problem cannot demonstrate that deriving normative necessity from non-normative necessity is unjustified when the necessity in question is *absolute* necessity, because absolute necessity entails that there are no other possibilities that we ought to, or even could, endorse. This notion, that merely because something *is* the case does not mean that it *should* be the case, is irrelevant when there are no alternatives: ought implies can and therefore ought *must* imply what is necessary²⁴.

One might think that the problem, or at least some element of it, persists despite this result because of the possibility that we might reject or condemn our nature even if that nature, or relevant elements of it, are necessary: in a sense, we can bemoan the plight of our existence independently from any possibility of changing it; so, forget the hypothetical 'shmagent' but keep the problem. Assume, for the sake of argument, that the Kantian reply is correct and the shmagent is absolutely impossible, even as a hypothetical notion. Notice that even if I accept that the Kantian reply is correct, the problem does not appear to vanish, I can still ask if I ought to be the way I am *even if I accept that there is no feasible alternative*. Furthermore, I can still regret or condemn how I am constituted independently from any notion of what else I could be (or, the impossibility of being anything else). The problem is that, in a sense, the shmagency problem never required the shmagent at all, the notion of a shmagent was a tool of rhetoric rather than a crucial element of the problem. The implication of this problem is that the Kantian reply can solve the shmagency problem but at the cost of it resurfacing without the notion of the shmagent and, hence, the Kantian reply has failed to solve the problem after all. This might be considered analogous to the problem posed by George Moore (1903) in *Principia Ethica*, where he argues that utilitarian attempts to define good as pleasure result in an open question (what

²³ At least no sense within the scope of the Kantian theory of knowledge. The point here is that the hypothetical alternative to agency *simply does not exist even as a hypothetical* unless you abandon the theory of knowledge underlying the Kantian reply. The aim, remember, is to demonstrate that the shmagency problem is not targeted at the constitutivist approach to establishing normativity but, instead, at the Kantian theory of knowledge as such.

²⁴ This might raise the concern that utilising necessity in this manner will result in problematic normative concerns beyond morality. For example, that logic or mathematics are normative because of the mathematical and logical problems which have necessary answers. I do not think this is a problem for the Kantian reply I have put forward in this paper. Because, even if it is a problem at all, it would be a problem for the Kantian theory of knowledge as such, rather than the constitutivist approach. While these two are fundamentally related, one is founded upon the other, the two remain distinct in terms of which is the appropriate to critique with which problems in particular: the theory of knowledge must solve the problems related to the nature of knowledge and the theory of normativity must solve the problems related to metaethics. I suspect that any intrinsic incompatibility between normativity and mathematics or logic are epistemic rather than metaethical. That said, to see how such a problem might be solved in defence of the Kantian tradition see Tyke Nunez's (2018) "Logical Mistakes, Logical Aliens, and the Laws of Kant's Pure General Logic".

then, is good?) or a tautology, when the assertion that good is pleasure is meant to be a substantive statement not just an assertion that the words are equivalent (p. 67 and 72). This type of problem can be ported into the implications of the Kantian reply to the shmagency problem by asking why the absolute impossibility of the shmagent entails that we should endorse our constitution. The Kantian argument that the shmagent is a nonsensical notion still leaves the open question of whether we should endorse our constitution (and, therefore, the prescriptions which follow from that constitution). The idea is that the Kantian reply fails to solve the shmagency problem because it can still be posed, just without the notion of a shmagent. In this sense, a cost of the Kantian reply is that the shmagency problem question, 'why be an agent?', can be asked again just without providing an alternative to agency.

Enoch (2011a) discusses his disagreement with Velleman in similar terms when he argues that: "Given Velleman's concession that the justificatory question remains open even given the but-you-do-care reply, even when this reply is strengthened by some inescapability point, his major line of response to the shmagency challenge consists simply of denying that the challenge - understood externally, as I meant to present it - even makes sense." (p. 227)

As I explain in §1.1 the debate between Enoch and Velleman focuses on whether the shmagency problem question ('why be an agent?') makes sense if asked externally from agency. Like Moore with the open question argument, Enoch is asserting that deriving normativity from something that is non-moral leaves an open question that demonstrates the problem with such an attempt to explain morality. Moore (1903) argues that the utilitarian attempt to define 'good' as 'pleasure' does not explain what the good is because it fails to justify why pleasure is good and, in failing to provide such a justification, has left the question of whether pleasure is good open (pp. 62-67). In Enoch's case, he argues that Velleman's attempt to define 'what we ought to do' as 'what we are constituted to do' does not explain what we ought to do because it fails to justify why our constitution determines what we ought to do and, therefore, leaves the question of whether our constitution determines what we ought to do open.

My comparison with Moore's open question argument identifies that the Kantian reply to the shmagency problem requires asserting that the question Enoch argues remains open does not make sense. By arguing in § 1.6 that Kantian constitutivism can solve the shmagency problem by pointing out that elements of agency are necessary in an epistemic sense (required for any objective claims whatever) I am providing a type of inescapability response to the shmagency problem. Enoch (2011a) explains that:

"The shmagency challenge is closely related to more common open-question-argument-like challenges, challenges that demand some explanation for the normative status of the relevant target - here, agency, or the aim constitutive of it, or some such. And I have hinted above - as well as in 'Agency Shmagency' - that the most natural way of defending the normative non-arbitrariness of such things is by invoking a general, constitutivism-independent reason to be an agent," (p. 228-229)

Enoch's point is that to solve the shmagency problem question there must be an explanation of how constitutivism does not leave the shmagency problem question open: constitutivism needs

to explain why the shmagency problem question is defective. Enoch goes on to speculate that constitutivism might be able to solve this problem if it could justify why the having “a reason to pursue self understanding [or, self constitution] because *that’s just what it is to have a reason*; it’s to be related in the relevant way to the pursuit of self-understanding” (p. 229). One might understand my Kantian reply to the shmagency problem as developing on Enoch’s speculation. The reason the process of self constitution is “just what it is to have a reason” is that the elements of the self that entail this claim are necessary to be understanding the world at all (see § 1.6). The point is that asking questions externally to these necessary elements of our constitution requires asking questions externally to what is necessary to understand anything at all and, therefore, the question is defective (because asking it precludes what is necessary to understanding the answer).

This concern that the question may still be raised despite the necessity of agency is not problematic for the Kantian reply because it is only true in a phenomenological sense which prevents it from threatening the grounding of knowledge, and normativity, in how we are constituted. What I mean by ‘phenomenological’ is that it is merely the case that one can *feel like*, experience the sentiment that, we ought to be constituted in a different manner. While we might feel like it would be better if we were not rational that cannot, for the Kantian, entail any obligation that we should not be rational. As I explained earlier, the Kantian reply entails that we ought to be constituted as we are *because* it is necessary: so the concern that we can still raise the shmagency problem without shmagents, ask ‘why be an agent?’ even if there is no alternative, is not a problem for the Kantian because when it comes to how we are constituted there is *only one thing we can do*.²⁵

Of course, this does not mean we cannot condemn the plight of our existence and bemoan the task of reason; at least, it does not mean we cannot *feel like* it is hard, difficult, or unfair to be constituted as rational beings. But such feelings are not evidence of a conceptual problem, a shortcoming in the grounding of knowledge and normativity, they are simply feelings that do not match our obligations. Notice that the reply to this new concern is the same as the reply to the shmagency problem. The Kantian reply to the shmagency problem is to point out that we absolutely must be agents and, therefore, must endorse our constitution because it is necessary

²⁵ Notice that if Kantian constitutivists are correct that endorsing our agency (and the moral law that follows from agency) is required in order to be coherent, then they have successfully derived normativity from a formal evaluation of our own faculties: they have solved the empty formalism problem. Georg Wilhelm Friedrich Hegel critiques Kant in *Philosophy of Right* where he argues that self direction of the will alone is insufficient to establish morality (§ 135 or p. 114). Hegel’s point is that deriving morality from the will alone cannot provide the content of morality because obligations cannot arise without contribution from other elements of our nature: hence, according to Hegel, Kant’s moral theory is an empty formalism because it fails to appreciate the contributions of crucial elements of our nature. Ping-cheung Lo (1981) argues, in “A Critical Reevaluation of the alleged ‘Empty Formalism’ of Kantian Ethics”, that developments of Kant’s categorical imperative can offer a solution to this problem of empty formalism by formulating the categorical imperative such that it explains why content follows from it (pp. 186-187, 197-199). Lo argues that some of Kant’s formulations of the categorical imperative already provide this type of solution. Given that both Velleman and Korsgaard utilise these formulations of the categorical imperative in the development of their theories they could be considered to have proven Lo’s claim.

to be constituted as we are in order to know things at all. The Kantian reply to this concern remains the same, even when the notion of the shmagent is removed: it is still the case that we must endorse what is absolutely necessary, because there is no other option. How we are constituted is a necessary component of the Kantian theory of knowledge and, therefore, we must endorse our constitution in order to endorse any knowledge at all (because it provides the grounding for the Kantian theory of knowledge). So, we must endorse our constitution.

If this reply to the new concern, the shmagency problem without the notion of the shmagent, is unsatisfactory, the reason will be because of some problem with the Kantian theory of knowledge. One might continue to object by insisting that even if our constitution is necessary for the Kantian theory of knowledge, that does not mean we cannot object to it. This does not need to entail an alternative theory of knowledge, one could merely insist that one does not want to undertake knowing things at all. So, even if one must endorse one's constitution in order to endorse any knowledge at all, one could still refuse to endorse one's constitution! Once again, this is not a problem for the Kantian. It is not a problem for the Kantian reply to the shmagency problem because this rendition of the shmagency problem has become a problem with the Kantian theory of knowledge *in general*. In moving the problem to the Kantian theory of knowledge I have accomplished my primary goal, the constitutivist approach is no longer subject to the shmagency problem, although at the cost of moving the problem elsewhere. Furthermore, because the shmagency problem has now been moved to a problem with the Kantian theory of knowledge, the shmagency problem has become a skeptical argument in the broadest sense (an argument against knowledge). As for what constitutivists might say to such a broad skepticism: they will point out that undertaking *any* activity of reason is an endorsement of the faculty of reason, and so even raising this problem entails endorsing how one is constituted; which is to say, they will point out that broad and all-encompassing skepticism is self defeating.

One might put forward alternative theories of knowledge, and in that manner utilise what has become of the shmagency problem, in the aftermath of the Kantian reply, to argue for one theory of knowledge over another. In this manner, one might avoid applying the shmagency problem as a skeptical argument in the broad sense (an argument against the possibility of knowledge) and instead as a reason to favour one epistemological theory over another. This application of the shmagency problem question, despite making no use of the notion of a shmagent, might turn out to be a problem for the Kantian tradition (or, it might not) but note that it is no longer a problem for the constitutivist approach. except in the most indirect sense.

In summary, the costs of the Kantian reply are that: it relies on the Kantian theory of knowledge, it is incompatible with the relativist foundations for Velleman's theory, and it derives normative necessities from non-normative necessities. While I do not think that Velleman would be compelled to elect for these costs in place of the costs of his own reply, those readers who find the relativist foundations Velleman appeals to implausible are likely to find the Kantian solution more plausible. The costs of the Kantian reply to the shmagency problem are those same costs incurred by adopting the Kantian theory of knowledge in its own right. While these costs may, or

may not, be significant or acceptable, the point I have established is that by using this theory of knowledge, a subject-dependent constitutivist position, much like Velleman's, can provide an objectivist and realist reply to the shmagency problem.

1.8 The conclusion of the shmagency problem debate: the plausibility of underlying epistemic claims

The nature of objectivity is at stake in both Velleman's and the Kantian reply to the shmagency problem. In both cases, solving the shmagency problem requires appealing to a notion of objectivity, and it is that appeal which results in the costs of the reply. The effect of the shmagency problem critique is that it reveals these metaphysical and epistemic commitments of the constitutivist position: in order to solve the shmagency problem, a constitutivist must justify why their grounding of normativity in what is constitutive of agency is either compatible with alternative normative truths for sufficiently different subjects or why sufficiently different subjects are not possible.

Enoch (2011a) explains that the result, "Score-keeping", of the debate between Velleman and himself hinges on their disagreement over whether the shmagency problem question is defective if asked externally from any framework provided by what is constitutive of a subject (pp. 227-228). Enoch is correct that the result of the debate between him and Velleman is a divergence on this point, because the competing commitments about what the nature of normative objectivity is are exposed by the disagreement over the possibility of such a question. The disagreement reveals three alternative explanations of what the shmagency problem question shows:

1. If the shmagency problem question demonstrates that one could hypothetically alter the constitution of a subject to alter 'objective' normative facts, then those normative facts must have relativist foundations. (Velleman's reply)
2. If the shmagency problem question demonstrates that one cannot, *even hypothetically*, alter the constitution of an agent then those elements of our constitution which make us agents must be necessary in a foundational sense. (Kantian reply)
3. If the shmagency problem question demonstrates that there is at least one normative question which cannot be answered by referring to what is constitutive of agency, then that constitution cannot be the source of normativity. (Enoch's position)

Enoch begins the debate by putting forward explanation three and Velleman in reply puts forward elements of both explanation 1 and 2. Velleman (2009) argues that the shmagency problem question does not make sense because the agent's constitution is necessary for normative objectivity (pp. 125-133). At this point Velleman was in a position to expand his reply into *either* reply 1 or 2. In response to Velleman, Enoch (2011a) argues that the necessity of agency does not entail that the shmagency problem question is defective because the shmagents position can still make sense *hypothetically*, that is, even if we *must* be agents, we can imagine shmagents (pp. 223-227). Velleman (2013) then clarifies that his foundations are relativist (pp. 68-69). This clarification solves the shmagency problem for Velleman because it allows him to establish response 1 by arguing that alternative moral facts are not relevant to his theory if they require altering the constitution of the subject (Velleman, forthcoming, p. 15-16). Response 2 is an alternative solution to the shmagency problem which a subject-dependant constitutivist may adopt to preserve realist objectivism and avoid relativism while still solving the shmagency problem.

The shmagency problem reveals that constitutivism cannot provide objectivity as Enoch defines it. Enoch (2011a) argues that external questions which do not assume that a response is dependant on the constitution of the subject can, at least hypothetically, make sense (pp. 227-228). In the case of either reply to the shmagency problem, a normative question, asked externally from the nature of a subject, is nonsensical, and therefore, if the question does make sense 3 must be the correct position. Velleman argues that you could hypothetically adopt a different constitution, but normative questions still require some form of a subject's perspective: hypothetically you could be an agent or a shmagent and ask a normative question, but you cannot be neither. The Kantian argues that only questions which provide the necessary elements of agency are possible within the realms of knowledge.

The expectation that such a question, external from the nature of a subject, makes sense, reveals that Enoch's understanding of objectivity is incompatible with constitutivism. Incompatibility with an understanding of knowledge that allows for such an external question is an implication (and, perhaps, cost) of the constitutivist position: the shmagency problem successfully demonstrates that a constitutivist cannot make sense of a normative question which does not appeal to the constitution of a subject for its answer. In this sense, Enoch's critique is successful. However, it does not leave the constitutivist without reply, and in the case of the Kantian reply the constitutivist can preserve realist objectivity by taking the position that *no questions of any type* make sense without appealing to the nature of the subject²⁶. The conclusion of the shmagency problem debate is that constitutivism requires the role of the subject and, hence, is either relativist or entails a theory of knowledge in which the subject is necessary.

Velleman argues that you could hypothetically adopt a different constitution, but normative questions still require some form of a subject's perspective: hypothetically you could be an agent or a shmagent and ask a normative question, but you cannot be neither. The Kantian argues that only questions which provide the necessary elements of agency are possible within the realms of knowledge. The issue is decided on the costs each of these entail, their underlying epistemic commitments. Enoch's critique requires a theory of knowledge which can make sense of external questions and so entails some sort of external realism. Velleman's solution requires a theory of knowledge which can support a relativist normativity. The Kantian reply requires that the subject is absolutely necessary for, the source of, objectivity and so entails the Kantian theory of knowledge.

For Enoch this is the success of the shmagency problem because it demonstrates that constitutivism cannot establish normativity without committing to the claim that the normativity it establishes is dependant on the nature of the subject. For Velleman the inapplicability of the shmagency problem question to his theory entails the failure of the shmagency problem, rather

²⁶In *Taking Morality Seriously A Defence of Robust Realism* Enoch (2011b) makes the point that a theory of knowledge which requires the subject but does not allow for a variation of responses is, in terms of the results of the theory, no different than a theory which is "response-*in*depend[ent], objectivist, Platonist".

than the failure of his theory. The shmagency problem does not apply to relativism and so Velleman would not consider it a successful critique. The shmagency problem demonstrates that the constitutivist must become a relativist or subject-dependent, so Enoch would be in a good position to consider it successful. Both parties to the debate are successful in the sense that they demonstrate in the context of their epistemic commitments that they are correct. Therefore, the results of the shmagency problem are a clarification of the epistemic and metaphysical assumptions underlying the metanormative claims of constitutivism. The plausibility of the constitutivist approach is dependent on the theory of knowledge you adopt.

Section 2: Korsgaard's constitutivism and developing a reply to the shmagency problem

2.0 Korsgaard's constitutivism: developing a reply to the shmagency problem

Christine Korsgaard's Kantian constitutivist theory can be defended from David Enoch's shmagency problem critique by deriving a justification for the objectivity of the normativity her theory purports to establish from her reply to Gerald Cohen's bad action problem. In "Agency, Shmagency: why Normativity Won't Come From What is Constitutive of Action" Enoch (2006) critiques Korsgaard's constitutivist theory. Korsgaard (1996b) argues in *The Sources of Normativity* that objective normativity can be derived from what is constitutive of agency by undertaking an examination of our use of rational reflection to make decisions and take action, which she describes as the process of reflective endorsement (pp. 49-51, 89, 92-93, and 128-130). Enoch argues that Korsgaard's approach cannot succeed because it fails to provide a reason for us to endorse how we are constituted: if the contents of normativity is determined by how we are constituted and we have no reason to endorse our own constitution then we have no reason to endorse the contents of normativity. Korsgaard does not provide a reply to Enoch's critique but she does provide a reply to a similar problem posed by Gerald Cohen (1996) in "Reason, Humanity, and the Moral law". Cohen argues that Korsgaard has failed to provide a sufficient reason for a subject to endorse one element of their constitution over another and, hence, has failed to justify why a subject should endorse her theory of normativity rather than an alternative which derives the moral law from a different element of our constitution than Korsgaard utilises. Korsgaard replies to Cohen by explaining that she derives normativity from a necessary element of our constitution which, because of its necessity, all of us must endorse over and above any alternative elements. While Cohen and Enoch appear to be targeting different elements of Korsgaard's theory, in the particulars of their critiques, an examination of Korsgaard's reply to Cohen demonstrates that her solution to his critique also provides a solution to Enoch's shmagency problem.

I demonstrate how a reply to the shmagency problem can be derived from Korsgaard's reply to Cohen's bad action problem by explaining why the shmagency problem applies to Korsgaard's theory and examining the similarities with why the bad action problem applies to her theory, followed by an explanation of why her solution to Cohen's problem is addressing the same perceived error with her theory that Enoch targets. In § 2.1 I explain Korsgaard's constitutivist theory which allows me to demonstrate why the shmagency problem applies to it in § 2.2. Following this in § 2.3 I explain a related problem that fails to solve the shmagency problem on behalf of Korsgaard's theory. In § 2.4 I examine the bad action problem in preparation for §2.5 which explains the crucial similarity between the shmagency problem and the bad action problem. This allows me to undertake an analysis in § 2.6 of how Korsgaard solves the bad action problem and then explain how this solution also applies to the shmagency problem in § 2.7.

2.1 Korsgaard's constitutivism

Korsgaard's constitutivism is supported by a transcendental argument founded in necessary elements of our experience of the world derived from observations of the structure of the self. When described in this way it is not immediately obvious how, or why, her position is subject to the shmagency problem. Given that the shmagency problem deals in the contingent details of the self while her theory does not, there is an initial difficulty in seeing how the two relate at all. The shmagency problem is predicated on the assertion that the particulars of the self are not necessary, that they might be otherwise, while Korsgaard's argument is predicated on an element of the self that is, at least supposedly, necessary. However the shmagency problem applies to Korsgaard's method; the necessary elements of the self she utilises are included in the elements of the self deemed contingent in the shmagency problem. That disagreement is developed in the following section, prior to that development, Korsgaard's argument, and its use of the necessary element of the self, needs to be explained.

According to Kantian constitutivism the source of normativity is self constitution. Korsgaard (1996b) argues that normativity is the product of reflective endorsement, the result of the activity of rational reflection (pp. 49- 50). By reflective endorsement Korsgaard means the process of making a decision (deciding what to endorse) by utilising your faculty of reason.²⁷ This activity, reflective endorsement, is a commitment to your own identity and is authoritative because it is fundamental to the nature of the self (pp. 100-104). Being an agent *means* solving problems, such as what aims we should have and how to achieve them, with reflective endorsement; Korsgaard (1996b) argues that we have privileged access to this fact in the sense that we need only experience our own faculty of reflective endorsement in action to understand that it is fundamental to what we are:

The reflective structure of the mind is a source of 'self-consciousness' because it forces us to have a *conception* of ourselves . . . When you deliberate, it is as if there were something over and above all of your desires, something which is *you*, and which *chooses* which desire to act on. This means that the principle or law by which you determine your actions is one that you regard as being expressive of *yourself*. To identify with such a principle or way of choosing is to be, in St Paul's famous phrase, a law to yourself. (p. 100)

Reflective endorsement is simultaneously the deployment of reason to dictate laws to oneself and the activity of being yourself²⁸.

²⁷ § 3.7 develops this further by explaining the relationship between our control over our own decisions, our faculty of reason, and the nature of autonomy and freedom.

²⁸ Sorin Baiasu argues in "Constitutivism and Transcendental Practical Philosophy: how to pull the Rabbit out of the hat" that Korsgaard's account of agency and the role that agency plays in her theory commits her to transcendental idealism (p. 1206). Baiasu argues this because Korsgaard's account of agency is something that we must establish by synthesising multiple claims and something that we can establish prior to learning of the particulars of any specific phenomena: Baiasu's argument is that Korsgaard's account of agency is simultaneously a synthetic and an a priori claim. Whether or not Baiasu is correct Korsgaard is providing a transcendental argument in order to establish her Kantian constitutivist theory.

Self constitution is the activity of reflective reason. Acting for reasons, doing what you ought to do, is the activity of constituting yourself. Korsgaard (2009a) explains in “The Activity of Reason” that reasons are “a ground of belief or action that has been endorsed by the person who believes or acts” (p. 26). The activity of reflective endorsement is what develops a belief or states of affairs into a *reason*, the activity of reflection is what provides the normative force. Korsgaard explains that this is a *grounding* for normativity in the Kantian sense, in the sense that it explains both what normativity is and where it comes from: it provides the story of normativity, the story you provide when someone asks what it is, why it exists, and why they should believe the story you are telling them. The evidence provided in support of this grounding is found within the nature of yourself, your own experience of the manner in which you yourself function. It is not any particular experience of reflection which provides this support, but the *structure* of reflection. Utilising such an analysis of the structure of your own mind to support the grounding of normativity is, to relate it to the Kantian tradition upon which Korsgaard builds, apperception. This apperception, as I shall now explain, is transcendental because of the necessity of the subject matter.

This grounding that Korsgaard provides, found in the structure of self reflection, is foundational. It explains why the normativity derived from the activity of self constitution is true: it is foundational because it is where the explanation of the nature of normativity ends in the sense that there is no further explanation that can be offered (beyond clarifying the theory already offered). Aristotle (1994/n.d) argues in *Posterior Analytics* that there must be some principle of understanding which allows us to get to know the definitions of primitive assertions, assertions which are the beginning of the explanations of the things that follow from them (72b 1-25). Korsgaard’s constitutivist theory uses how we are constituted as a foundation in the sense that it solves this problem: it explains the assertions which begin the explanation of the source of normativity and what follows from it. Korsgaard’s theory is grounded in the structure of our own reason, the nature of practical reason as evidenced by your own engagement in practical reasoning, because it is the nature of our understanding of normativity. The point is that the nature of our faculty of understanding, the structure of our own mind engaged in the activity of practical reason, is where we *must* find the explanation for the source of normativity, because it is our own understanding that provides the definitions of the most primitive assertions about normativity. The foundation of an explanation about normativity is the structure of the reasoning involved in normative decisions, practical reason, because the definitions of whatever it is that underlies (explains, makes up, constitutes) normativity, as such, must be found there.

Putting forward a theory based on evidence provided by the nature of our own mind and the ability of our reason to ascertain that evidence about the nature of our own mind is a Kantian approach to explaining the source of normativity. It follows the model put forward by Immanuel Kant (1781/1787/1996) in *Critique of Pure Reason*, where he proposes a system of transcendental philosophy which explains the nature of cognition by examining what is necessary for the cognition of objects to be possible at all (A11-16, B24-30). Korsgaard’s constitutivism is a transcendental argument which derives its conclusions from the nature of our

cognition. Our cognition must function in particular ways and that necessary structure, our constitution, is the grounding for normativity. Korsgaard puts forward this relationship as follows:

The reflective structure of human consciousness requires that you identify yourself with some law or principle which will govern your choices. It requires you to be a law to yourself. And that is the source of normativity. So the argument shows just what Kant said that it did: that our autonomy is the source of obligation. (1996b, pp. 103-104)

So, the reflective nature of practical reason entails the constitutivist theory Korsgaard puts forward. While this line of reasoning puts forward a transcendental argument, this does not entail that Korsgaard's theory *is* transcendental philosophy. Kant (1781/1787/1996) argues that while the grounding for morality, the "supreme principles and basic concepts of morality", are found prior to experience (*a priori*), do not fulfil the requirements of transcendental philosophy because they involve the practical perspective of action rather than the perspective of pure reason (A15, B29). This is because transcendental philosophy, as Kant puts it, deals in only what is conceptually necessary. So, they are not necessary insofar as they can be removed from the perspective of practical reason, but they are necessary given the nature of practical reason. The necessity of the self and the fact that its existence is implied in every thought provides the transcendental grounding for Korsgaard's position.²⁹

Korsgaard's theory utilises a Kantian approach by deriving its conclusions from the necessary nature of thought and therefore her theory ultimately depends upon the viability of transcendental philosophy. One might think of Korsgaard as putting forward a transcendental aesthetic similar to Kant's (1781/1787/1996) derivation of space and time (A23-49, B37-73). Where Kant argues that the nature of experience, how our understanding constructs experience, demonstrates that space and time are true prior to experience and without relying on any particular sensory data, Korsgaard argues that the nature of how we reflect on our actions demonstrates that normativity is true prior to experience and without relying on any particular sense data.³⁰

Similarly, transcendental philosophy can be used to show that reasons are objective, despite being provided by the agent.³¹ This method of establishing objectivity is a transcendental

²⁹ This applies to all Kantian constitutivist positions that utilise the Kantian approach to establish the grounding of normativity in what constitutes the self. Even if what constitutes the self is *practical* reason, the existence of the self is necessary in the sense that it must exist if thought exists (while thinking, the self is a necessity). It is this necessity, the necessity of the self during the activity of thinking, that allows for transcendental arguments (arguments about what must be true given what we have access to) based on the activity of reason.

³⁰ Which is to say, in both cases it is the nature of our faculty of understanding which demonstrates that space (for Kant) and normativity (for Korsgaard) must necessarily 'exist'. By exist I mean they must be found in the experiences we create. This method of demonstrating *why* normativity must exist entails that normativity must exist because of the relationship it has with other concepts which means that, like Kant's argument for the relationship between geometric facts and space and time, the theory establishes that normative truths are synthetic a priori facts because of their relationship with the necessity of normativity as it is found in the structure of our own reflection.

³¹ Remember that 'objective' refers to the necessity of the reason rather than a requirement that the reason is founded on something external to the agent, see §§ 0.3 and 0.4 for further details.

argument: it identifies something that exists and determines what must be the case given its existence. Korsgaard (1996b) utilises a transcendental argument to establish that we are valuable, which is a crucial element of grounding normativity³², in the following manner:

[R]ational action exists, so we know it is possible. [Then, of course, the question which follows is:] How is it possible? And then by the course of reflections in which we have just engaged, I show you that rational action is possible only if human beings find their own humanity to be valuable. But rational action is possible, and we are the human beings in question. Therefore we find ourselves to be valuable. Therefore, of course we are valuable. (p. 123-124)

The structure of reflective endorsement grounds normativity, as such, in the same manner: rational action exists and entails the endorsement of some reasons over others, this activity of endorsement *is* normativity. Observing the structure of our own minds is the transcendental apperception which Korsgaard utilises to establish normativity. This apperception, the analysis of the structure of your own mind, is transcendental because the structure of your mind is necessary³³. It must be the case that the reasons you provide are capable, when the reflection process is undertaken correctly, of being developed into universal laws, because the structure which develops the moral law is a necessary requirement for the activity of reflective endorsement. This universalizability of moral law, based on the necessity of the structure which produces the law, provides the objectivity of the moral law and in that sense, this argument is a transcendental argument. For this reason, because it is utilised to access objective facts, the apperception (introspection or self examination) which provides access to the structure of reflective endorsement is *transcendental apperception*.

This is a constitutivist theory because universalizable normativity is grounded in what is constitutive of the subject. As Korsgaard (2009b) argues in *Self-Constitution: Agency, Identity, and Integrity*:

“[R]espect for humanity is a necessary condition of effective action. It enables you to legislate a law under which you can be genuinely unified, and it is only to the extent that you are genuinely unified that your movements can be attributable to you, rather than to forces working in you or on you, and so can be actions. So the moral law is the law of the unified constitution, the law of the person who really can be said to legislate for himself because he is the person who really has a self. It is the law of successful self-constitution. So the basic insight behind Plato and Kant’s confidence here is not

³² Establishing that we ourselves are valuable is useful in grounding normativity in how we are constituted because explaining *how* our own value is established allows Korsgaard to demonstrate why grounding your own value also grounds the value of others. Demonstrating that value that is grounded in what is constitutive of agency is universalizable, applicable to others even though applied by, and to, the self, which allows Korsgaard to then demonstrate why moral obligations with the same grounding can also be universalizable; which is the project she undertakes in lecture 4 (Korsgaard, 1996b, p131-166).

³³ The nature of your experience of the world *is the experience of being a rational agent* and for the self to have that experience the self must *be rational*. Once this is established, by a self examination of the structure of your experiences, the necessity of what rational thought entails is just as necessary as the existence of rational thought itself.

really anything surprising or paradoxical. It is simply that every person interacts with others as he interacts with himself, and in this the good person is no different.” (p. 206)

The moral law is the *result of* the constitution of the agent - it is a requirement of that constitution. The story of why normativity, and hence the moral law, exists is the story of how we are constituted, how we identify that constitution, and what that constitution dictates we ought to do.

Gerald Cohen (1996), whose critical analysis of Korsgaard is considered later, provides a summary of Korsgaard’s argument for the foundation of morality in the nature of agency:

- 1 Since we are reflective beings, we must act for reasons.
 - But 2 If we did not have a normative conception of our identities, we could have no reasons for actions.
 - So 3 We must have a normative conception of our identities (and our factual need for a normative identity is part of our normative identity).
 - So 4 We must endorse ourselves as valuable.
 - So 5 We must treat (all) human beings as valuable.
 - So 6 We find human beings to be valuable.
 - So 7 Human beings *are* valuable.
 - So 8 Moral obligation is established: it is founded in the nature of human agency.
- (p. 185)

Notice that steps one to three begin the process of establishing morality by appealing to *necessary* elements of our own constitution. While Cohen provides this summary to demonstrate that Korsgaard cannot derive her conclusions from these foundations, the summary shows that her theory is an attempt to do so. That is to say, Korsgaard’s theory is a transcendental argument which founds morality in the necessary structure of our own mind. My present purpose is to establish the nature of Korsgaard’s argument to support the section that follows: it explains why her argument is subject to the shmagency problem.

So, Korsgaard’s constitutivism grounds normativity in the nature of practical reason (deciding what to do). For Korsgaard, the process of deciding what to do *is* the process of self-constitution, and that process is determined by the nature of the agent. The process of self-constitution, deciding what to do, is determined by the agent in the sense that the agent provides the rational faculties that undertake this process and determine its success or failure. Normativity is grounded in the constitution of the agent because it is the agent that determines what one ought to do; it is this perspective of practical reason, this process of self-reflection, that *is* one’s agency. Hence, because one is an agent, one is faced with *both* the problem of what to do *and* the faculty of reason which provides the solution.

This brings up an objection which may be confused with the shmagency problem. One might object that the problem of what to do cannot be solved by the faculty of reason because deciding what to do requires a motivational component that cannot be provided by reason. I have in mind David Hume’s (1739/2007) objection against ethics founded in practical reason in *A Treatise of Human Nature*, where Hume argues that reason cannot provide motivation,

because in the absence of a particular desire reason cannot determine whether one ought to do one thing or another (2.3.3.4-6). This concern is only weakly related to the shmagency problem, but my presentation of Korsgaard's argument may raise this concern, so it is worth addressing briefly. Korsgaard (1986) argues in "Skepticism About Practical Reason" that Hume's criticism of practical reason is based on a skepticism about the content of reason rather than a skepticism about motivation as such (pp. 5-6 and 25). Korsgaard's point is that if a suitable theory can show that the results of reason can provide a reason for action, the nature of motivation will not provide a suitable justification for being skeptical of that theory. So, a normative theory which explains how reasons for action are derived from practical reason would provide a counterexample to Hume's critique because such a normative theory would demonstrate that the content of practical reason includes reasons for action. So, she solves this problem by explaining that the concern is not motivated by concerns about motivation but instead by concerns about the content of practical reason. In this manner, Korsgaard demonstrates that her theory is the type of counterexample to Hume's critique that is required to solve the problem he poses, because her theory grounds reasons for action in practical reason. So, reasons for action exist in the nature of the moral law because the nature of the agent demands that the agent is rational. In that sense, the reason for action is found in the moral law itself and this is relevant to the agent because the process of self reflection is a demand on the agent, and a demand *by the agent*, to be rational.

In summary, Korsgaard's constitutivism is an examination of the self, of one's own nature as an agent that engages in practical reason, and grounds normativity in the result of that self examination. This self examination targets the structure of self reflection itself: it is *apperception*. Because this process of apperception is targeted at the *necessary* structure of the process of deciding what to do, practical reason, the theory that follows is transcendental. The structure of self-constitution, deciding what to do, is not contingent, it *must* be as it is, the normativity grounded in this element of the agent's constitution is objective. Korsgaard's (1996b) explains that her argument is transcendental because it first identifies that "rational action exists, so we know it is possible" and then explains "that rational action is only possible if human beings find their own humanity is valuable" (pp.124-125). Her point is that because we know rational action exists we also know that everything which is required for rational action is also the case - this is how she develops a transcendental argument that derives our value (and, ultimately, her theory of normativity) from an observation of the structure of our experience of the world. So, we find the source of value in our own faculty of practical reason: the grounding of normativity is found by the agent in their own constitution, in their faculty of reason.

2.2 Why the shmagency problem applies to Korsgaard's constitutivism

The shmagency problem attempts to demonstrate that self constitution could mean different things for different types of subjects. If the shmagency problem is correct, what self constitution entails would vary *if the constitution of the subject varied*. The argument goes as follows: if constituting myself coherently is the aim of action, then my aims will depend on how I am constituted, because my constitution determines what must be made coherent, and how I am constituted *could have been otherwise*. So, if coherent self constitution means a particular set of moral laws for an agent, because of the agent's own constitution, then it might mean *another* thing for a different type of subject, a shmagent, because of how they are constituted. Once the possibility of alternatively constituted subjects is established, the shmagency problem question ('why be an agent?') can be asked, even by those subjects which are already agents. This is a problem for Korsgaard's theory because the shmagency problem question is a normative question which cannot be answered by referring to constitutivism. Your constitution as an agent can tell you what agents should do, but it cannot tell you whether you ought to be an agent; hence, the shmagency problem demonstrates that Korsgaard's moral law is not a categorical imperative, it is merely a hypothetical imperative because it depends on a contingent claim (that you are an agent).³⁴ So, the argument is that the grounding of Korsgaard's theory, agency, is contingent because Enoch has demonstrated the existence of an alternative: the shmagent. This contingency demonstrates that the grounding Korsgaard's theory relies on cannot provide objectivity.

Korsgaard has not provided a reply to this problem, however I have derived one from her solution to another critique of her theory. Korsgaard's reply to this problem would be that the necessity of the source of normativity is incompatible with the contingency of the source of normativity: normativity cannot be, and is not (in her theory), derived from contingent elements of the self. Korsgaard (1996b) explains the problem of the existence of normativity as an impossible choice between grounding normative facts in externally real normative entities (entities which are moral facts) or in some normative consideration (such as compassion or a form of contract) (pp. 30-32). Korsgaard uses the term "natural source of power" or platonic realism and relates it to the realists position contextually (p.30). Her discussion of Kant's reply to the difficulties of grounding normativity faced by metaphysical realists is the closest that Korsgaard comes to critiquing the underlying assumptions of the shmagency problem. The shmagency problem itself purports to utilise only what constitutivism itself provides, demonstrating that the problem persists even if you assume (for the sake of argument) much of

³⁴ I am ignoring the distinction that Korsgaard draws between the categorical imperative and the moral law. Korsgaard (1996b) argues that the categorical imperative and the moral law are distinct because the categorical imperative does not, in and of itself, entail morality unless one also thinks of oneself as a member of the kingdom of ends (p. 98-100). Korsgaard's constitutivist theory explains why an agent must make this additional step and consider oneself a member of the kingdom of ends: one must do so because one is inescapably engaged in the activity of self constitution. So, with that distinction acknowledged, I will continue to use the term "categorical imperative" to include the moral law as Korsgaard defines it. This simplification serves to clearly identify the connection between Korsgaard's constitutivism and the Kantian approach while allowing me to easily describe the similarities between the shmagency problem and a different critique later in this paper.

the assertions made by constitutivism (Enoch, 2006, p. 180). However, as Velleman points out in *How we get along* the shmagency problem question ('why be an agent?') assumes that one can ask a normative question without referring to agency itself (pp. 142-144). Velleman's point is that a question which seeks a normative answer which cannot be provided by the agent or what the agent constructs entails an assumption of robustly real (externally real) metaphysical normative entities; at least, assuming it is not attempting to posit a skeptical conclusion (which Enoch is not). For this reason a critique of the type of realism required to posit such a question could itself be considered a reply to the shmagency problem. In that context one might look to Korsgaard's (1996b) support for Kant's critique of such projects to find a reply to Enoch (pp. 33-40).

This is a problem because, she argues, positing externally real normative entities has been unsuccessful and other normative considerations, such as contracts, provide an unsatisfactory grounding because we cannot explain *why* those considerations have normative weight.³⁵ As Korsgaard (1996b) argues:

If we try to derive . . . [normativity] from some supposedly normative consideration, such as gratitude or contract, we must in turn explain why that consideration is normative, or where its authority comes from. Either its authority comes from morality, in which case we have argued in a circle, or it comes from something else, in which case the question arises again, and we are faced with an infinite regress. (p. 30)

Korsgaard's theory is a solution to these problems because it provides an explanation of the source of normativity: it explains why morality exists and why it is objective. The moral law, as Korsgaard (1996b) describes it, is objective in the sense that it is necessary (pp. 102-105 and 125). The moral law is necessary in the sense that it comes with the problem of deciding what to do (p. 89).

Enoch's shmagency problem extends the problem Korsgaard poses for supposedly normative considerations, like gratitude and contracts, to apply to Korsgaard's own theory. Where she dismisses these considerations as insufficient because explaining their authority results in an infinite regress, due to the need to appeal beyond the particular consideration put forward, Enoch's shmagency problem asserts that constitutivism suffers the same fate. Korsgaard's point is that if one puts forward a supposedly normative consideration as the source of normativity, the result will be the problem of regress; the problem of regress is the problem that there is still a question to be asked and it is the answer to *that* question which will be the source of normativity. Once the explanation has regressed in this manner the source of normativity is no longer the initial supposedly normative consideration, because explaining where the authority of

³⁵ See Korsgaard (1996b) p. 37-42. Korsgaard argues that approaches to the problem of normativity (to explaining why normativity exist) which posit external normative entities fail because they are essentially refusing to answer the question (p. 39). The appeal to the external entity, whatever it might be, is intended to be the end of the discussion, an appeal to a foundational claim, and in that sense proof in its own right. This, argues Korsgaard, is a failure to provide a satisfactory explanation and cannot deliver a satisfactory explanation about *why* we should obey the normative force of these entities even if we are willing to concede their existence.

that supposedly normative consideration comes from will entail providing the source of the normativity of that supposedly normative consideration: hence, the source of normativity must be what provides the normativity to that supposedly normative consideration rather than that normative consideration itself. The question that was supposed to have been answered is still, so to speak, an open question. This means that if any regression is possible in an explanation of the source of normativity, then the given explanation is insufficient; to be specific, there cannot be any regression past the ending point of the provided foundation. Even if the claim the explanation regresses to is sufficient (or, at least, does not suffer result in further regression) the regression still means that it is the claim the explanation has regressed to that is the source of normativity rather than the initial claim.

Notice that this is the same line of argument utilised by Enoch (2006) when he argues that:

If a constitutive-aim or constitutive-motives theory is going to work for agency, then, it is not sufficient to show that some aims or motives or capacities are constitutive of agency. Rather, it is also necessary to show that the “game” of agency is one we have reason to play, that we have reasons to be agents rather than shmagents. . . . And this, of course, is a paradigmatically normative judgement. . . . [I]f we need a normative judgment—that we have a reason to be agents rather than shmagents—in order for the constitutive-of-agency strategy to kick in, then the constitutivist strategy cannot give us the whole story of normativity. (p. 186).

So, my point is that Enoch is using Korsgaard’s own critique against her by arguing that the constitutivist approach regresses and for that reason fails to ground normativity: the normativity must be grounded in whatever gives our constitution its authority rather than in our constitution itself. This critique aims to show that Korsgaard fails at the task she has set for her moral theory on her own grounds; Korsgaard claims normative considerations cannot be the source of normativity because asking where their authority comes from results in a regression to either something else or to further regressions. Enoch points out that asking the shmagency problem question, ‘why be an agent’, demonstrates that one can ask where the authority from Korsgaard’s constitutivism comes from too.

One might think at this point that the other option Korsgaard (1996b) presents, “[e]ither its authority comes from morality, in which case we have argued in a circle, or it comes from something else” (p. 30), might offer some alternative to the shmagency problem. If Enoch’s shmagency problem demonstrates that Korsgaard’s appeal to our constitution to derive normativity is undermined by a regression, then perhaps she could appeal to morality as such, in conjunction with our constitution, to avoid this regression. However, if one took this route, it would either result in the type of circular explanation Korsgaard was concerned about or the shmagency problem would still apply. So, if one argues that our constitution as agents is the source of normativity because of the way morality is, this raises the problem of why morality is such that it is derived from our constitution. The answer to this is, according to Korsgaard’s theory, that this is because of our constitution, which then leads one to ask why our constitution has this relationship to morality. Hence, if we refer to the nature of morality to explain why our constitution is the source of normativity, we will have provided a circular answer because we

must use our constitution to explain why morality is the way that it is. Furthermore, even if we suppose that this particular circular logic is not vicious, that it is not a problem for our answer to rely on circular reasoning in this case, then we have still yet to answer the shmagency problem question ('why be an agent') because one could ask 'why bother beginning this circle at all'. Escaping the regression of explanation by deploying circular reasoning cannot succeed because an alternative to an agent whose constitution leads to this circular answer will be compared to a hypothetical alternative, a shmagent, whose constitution does not involve in this type of circular answer and then one can ask 'why be an agent and engage in that circle instead of a shmagent?'.

This relates to the reply to the shmagency problem that I provide in defence of Korsgaard's theory in §2.7 which can also be used to demonstrate why her reply to Cohen's problem that I discuss in §2.6 does not lead to the circularity discussed here. This might be done by deriving morality from non-moral foundations which in turn rest on epistemic foundations which themselves are not viciously circular. I will develop this line of thought later. My purpose in mentioning it here is merely to identify that infinite regression, vicious circularity, and the shmagency problem are not the *only* choices available. The point is that the shmagency problem applies to Korsgaard's constitutivist theory in the sense that it indicates that these are available choices: if Korsgaard has a reply to the problem which explains why these are not the *only* choices available, the problem applies in the sense that it demands she provide that reply. Korsgaard has provided no such reply.³⁶

If something about the solution to the shmagency problem is contingent, then the moral law itself is contingent because, as Korsgaard (1996b) argues, reflective endorsement (solving this problem) "*is morality itself*" (p. 89). So, the shmagency problem is a problem for Korsgaard's constitutivism because the shmagency problem illustrates that our constitution could be otherwise and because our constitution dictates how we solve the problem of deciding what to do, our constitution dictates how we create the moral law, the shmagency problem entails that the moral law itself could be otherwise and, hence, is contingent. Once it is established that the moral law is contingent, the agent can ask if they ought to obey it at all (they can ask 'why be an agent' with moral law, when I could be a shmagent with shmoral law?').

The *hypothetical* possibility of the shmagent demonstrates, if the shmagency problem is accurate, that any number of coherent prescriptions follow from Korsgaard's constitutivism. This is a problem for her theory because the imperative of self constitution, the aim which follows from how we are constituted, cannot be a categorical imperative if it is contingent, and if it is not

³⁶ I think the reason she provided no such reply is because she does not think the problem is worth replying to. She might think that it is not worth replying to because her theory is already presented with all of the tools required to diffuse the problem. The Kantian approach derives normativity from non-normative and necessary attributes of our own cognition and therefore does not require a further development or explanation of why it is not regressive, viciously circular, or subject to normative questions beyond its scope. However, even though I think that this is Korsgaard's position, I think Enoch's problem still justifies a reply: even if the tools to give such a reply are already present in Korsgaard's theory, the problem is problematic enough, on the face of the matter, to justify a demonstration of how those tools diffuse it.

a categorical imperative, then the normativity Korsgaard has derived from our constitution as agents is not objective. Korsgaard (1996b) provides developments of Kant's humanity and kingdom of ends formulations of the categorical imperative (p.122 and 127 respectively)³⁷. The argument is that a specific moral law follows from the process of self constitution and that those moral laws are universal and apply to all rational agents, they are categorical and prescriptive: the categorical imperative. This relationship between Korsgaard's constitutivism and the categorical imperative runs parallel to the objectivity of the normativity of her theory. Korsgaard's constitutivism derives objective normativity from the constitution of our agency because of the necessity of that constitution and that necessity is also what makes the imperative of self constitution categorical. This can be seen where she summarises the relationship between action, causality, the categorical imperative, and the self:

. . . the hypothetical and categorical imperatives are constitutive principles of volition and action. Unless we are guided by these principles—unless we are at least trying to conform to them—we are not willing or acting at all. The conception of action that yields this conclusion is Kant's conception: that action is determining yourself to be the cause of some end. The hypothetical imperative binds you because *what* you are determining yourself *to be* when you act is the cause of some end. The categorical imperative binds you because *what* you are determining to be *the cause of* some end is *yourself*. In fact, the two things are so closely bound together that they seem to be inseparable, for nothing counts as trying to realize some end that is not also trying to determine *yourself* to realize that end, and nothing counts as determining yourself to realize the end that is not also trying to determine your own *causality*. In fact . . . the two ideas are so closely linked that there is something artificial in the idea that there are *two* imperatives. There is really just one imperative here: act in accordance with a maxim you can will as a universal law. The hypothetical imperative merely specifies the kind of law we are looking for—a causal law, a practical law. And that thought is already contained in the idea that what we are looking for is a law that governs *action*. It appears that there is only one law of practical reason, and it is the categorical imperative. (Korsgaard, 2009, p. 81)

So, because Korsgaard argues that our agency demands *by its very nature* and because of *what it is* that we constitute ourselves coherently, she is deriving the categorical imperative to the same extent, and in the same manner, that she is deriving normativity. Which is to say, grounding normativity in our constitution as agents and deriving the categorical imperative from our constitution as agents is the same thing. It is the same thing because determining what it is *necessarily* the case that we *should do* by referring to what is constitutive of our agency is both explaining where normativity comes from and why it exists (grounding normativity) and demonstrating why that normativity is necessary (why the imperative is categorical). So, the activity of self constitution, which is the overarching imperative that Korsgaard derives from our constitution as agents, is both an explanation of the source of normativity and of the categorical imperative. This is also the point that Enoch's shmagency problem is in direct conflict with.

³⁷ Or, p. 120-130 for the expanded reconstructions and the entire chapter for supporting developments. Korsgaard also provides an adaption of the Kingdom of Ends formulation of the categorical imperative in *Self Constitution: Agency, Identity, and Integrity* p. 188-206.

This relationship between the categorical imperative and the activity of self constitution demonstrates why the shmagency problem question applies to Korsgaard's constitutivism. The normativity derived from our constitution, by Korsgaard's theory, is supposed to provide the answer to all normative questions - just like the categorical imperative. This is because Korsgaard's constitutivist theory is a formulation of the categorical imperative. Her argument that what we ought to do is constitute ourselves coherently is both categorical and an imperative; it is also intended to be the source of the solution to moral problems and, hence, a formulation of our obligation, to ourselves, to be coherent: the categorical imperative. Enoch's shamagency problem appears to demonstrate a normative question that either Korsgaard's theory cannot answer or that might be answered in multiple, incompatible, ways. We might, according to Enoch, have a reason to endorse agency that is not derived from our constitution, or there might be a competing reason to endorse shmagency that is derived from a rival constitution.³⁸

While it might be an awkward problem if we found that there were normative questions which we cannot answer, the prospect of *alternative answers* to normative questions is a more significant problem and it is the problem posed by the shmagency problem: if one asks why one should endorse one's own agency, the problem is not merely that this is a question the constitutivist cannot answer, but that it implies that the answers derived from our own constitution are no more worth endorsing than the answers derived from alternative constitutions. Hence, our own constitution cannot establish that the normativity it provides is necessary because it cannot establish that this normativity is worthy of endorsement over any alternative (hypothetical or otherwise). So, the problem would be that there cannot be a categorical imperative to obey the normativity derived from my own constitution (because there is no reason to endorse my constitution) and, therefore, my constitution cannot be necessary.

At this point it appears that something has been misunderstood about Korsgaard's theory in order for the shmagency problem to be applied to it. On the one hand it appears that Enoch's shamagency problem question demonstrates that the categorical imperative and the task of self constitution have been put at odds (there is no categorical imperative to endorse the task of self constitution). This means that Korsgaard's theory has been undone because it cannot provide objective normativity; because it can only provide normativity based on something contingent: our own constitution. On the other hand the point that how we are constituted is necessary is central, and crucial, to Korsgaard's theory, so one might wonder if Enoch has misunderstood Korsgaard's constitutivism by supposing that our constitution might be otherwise. The distinction

³⁸ Peter Railton (1997) raises a related concern in "On the Hypothetical and Non-Hypothetical" where he argues that constitutivism is incompatible with asking some questions about normativity: Railton argues that a constitutivist would be unable to criticize an agent who refused to give deliberative weight to an end that it acknowledged as following from its own constitution (p. 70). Railton's point is that constitutivism can only attempt to compel agents by appealing to their constitution, which leaves them with no recourse if confronted with an agent whom is admently uncompelled by their own constitution despite acknowledging what it entails.

that leads to this contention is the use of normative and non-normative necessity. Enoch's shmagency problem does not depend on us *actually* being able to provide a particular alternative to agency: the shmagent does not actually have to be something that exists. Rather, the point is that we can question whether we *ought to be* constituted as we are. So, while Korsgaard develops her theory from the point that we *must* be agents Enoch is pointing out that there is a distinction between what we *have to do* and what we *ought to do*. The shmagency problem applies to Korsgaard's constitutivist theory as a critique of her use of non-normative necessity to derive a normative necessity: essentially, Enoch is arguing that Korsgaard has failed to establish that it is *normatively necessary* to be an agent and instead has derived her conclusions from the *non-normative* necessity of agency³⁹.

³⁹ Which *is* in fact a misunderstanding of Korsgaard's theory because the necessity she is utilising is not normative but it is special in other regards. This is a point I will develop soon and then pick up again later.

2.3 A similar problem, which fails to show that Korsgaard's theory is not subject to the shmagency problem

Before I continue to discuss the bad action problem, and develop a solution to the shmagency problem based on Korsgaard's reply to the bad action problem, I need to discuss a problem which is very similar to the shmagency problem that Korsgaard does provide a clear solution to. The solution to this problem does not solve the shmagency problem, but the reasons why it fails to do so are important in their own right: they provide further demonstration that the shmagency problem applies to Korsgaard's constitutivism. The shmagency problem claims that while a specific moral law follows from the process of self constitution, our particular constitution plays a role in that process and changing our constitution would change the results of the process; hence, the moral law is not universal because it would be different if we were differently constituted. Michael Smith puts forward a similar critique in "The Magic of Constitutivism", where he argues that there are multiple functions constitutive of our nature and that the laws coherent with some of those functions will compete with laws that are coherent with others (pp. 193-194). As Smith's argument exposes there appear to be different types of necessity that relate to our constitution. Agency is necessary in the sense that I could not be a thinking and acting agent that understands the world without it and this makes it necessary. However, there are myriad other elements of my constitution that I would not be myself without too such as my gender, parts of my genetic makeup, my particular upbringing, and so on. Smith's point is that the inescapability of our agency does not entail that we ought to follow the prescriptions of agency, because if that was the case, then the obligation that arises from inescapability would also apply to other inescapable elements of our nature: so, the inescapability of agency cannot be what entails that we ought to endorse agency's prescriptions. Smith puts forward the function we have as vehicles for our genes and explains that we have this function because we are human beings which is an inescapable state of affairs (p. 194).⁴⁰ This inescapable state of affairs, being a human animal, also appears necessary for the same reasons that it is inescapable: there does not appear to be any sense in which we can completely escape or cease engaging in the activity of being human and this activity of being human entails this function. Notice that the crucial point is that there appear to be many elements of our constitution *other than agency* which appear to have similar qualities to agency (although it is *not* clear that they are necessary in the same sense as agency - but this is a point I am about to develop and then expand on in §§ 2.6 and 2.7). So, if the necessity of our agency entails that the normativity derived from our constitution as agents is objective then, it appears, so would the normative prescriptions we can derive from other necessary elements of our constitution.

One might contest that this analogy appears unfair because of the distinction between the types of necessity relevant to these different types of inescapable elements of our constitution. Korsgaard's constitutivism could be defended in this manner by describing one as an inescapable hypothetical imperative and the other as the categorical imperative. The defence

⁴⁰ Smith gets this example from Richard Dawkins (1976) *The selfish gene*. The particulars, and appeal, of Dawkins position is beside the point so I will not develop it here. Smith uses this example as a convenient method of providing an alternative function which we inescapably have and seems to prescribe particular courses of action.

would be that prescriptions which follow from our nature as vehicles for our genes are not objective because they are a hypothetical imperative: *if* one wants to obey the demands of our genes (food, breathing, finding shelter, and so on). In contrast, the prescriptions which follow from our nature as agents are objective because they are categorical: one ought to obey the prescriptions which agency entails in all cases. However, this distinction will not protect Korsgaard's constitutivism from Smith's critique for the same reason that the shmagency problem applies to her theory: the relationship between the necessity of the imperative and whether the imperative is categorical is what is in question.

Korsgaard argues that the necessity of our agency is what makes the normativity derived from our agency objective but that approach appears to be able to render *other* necessary elements of how we are constituted, that also have functions from which we can derive prescriptions, objective too. So, the normativity derived from agency must be, in some way, special such that its necessity can entail objectivity. Notice how this has developed in the same manner as the shmagency problem: Enoch's shmagency problem demands that the constitutivist explain *why we should endorse agency*, and Smith's presentation of non-agential elements of our constitution from which we can derive prescriptions demands that the constitutivist explain *why the necessity of agency is special*. In both cases the problem is an apparent disjunction between the hypothetical and categorical imperative, because in both cases Korsgaard's theory is being critiqued for putting forward what appears to be a hypothetical imperative as a categorical imperative.

However, Korsgaard (1996b) provides a solution to Smith's (2015) problem when she argues that:

The test of reflective endorsement is the test used by actual moral agents to establish the normativity of all their particular motives and inclinations. So the reflective endorsement test is not merely a way of justifying morality. *It is morality itself.* (p. 89)

Normativity is uniquely related to agency because it is our agency which provides prescriptions *as such*. The point is that there is a fundamental distinction between what agency entails and what other elements of how we are constituted entail because the *kinds* of things they entail are different. They are different because, according to Korsgaard our agency *is* our practical reason.

As Korsgaard (1996b) explains, our agency is our practical reason in the sense that "[y]our humanity requires you to conform to some of your practical identities" (p. 123) and "moral identity exerts a kind of governing role over the other kinds" (p. 130). It is your humanity which entails practical identities and because morality governs practical identities that means your humanity entails morality. In this manner Korsgaard justifies our agency as the source of normativity in a manner that does not allow for any other constitution to provide a rival normativity. Note that this does not mean that other elements of our constitution cannot be in contention with the moral law. The point is not that only agency prescribes, the point is that agency governs law principled behaviour and so is the arbitrator of any such conflicts. So, agency might conflict with other elements of your nature but agency is also the decider of those conflicts and so the resolution will be agency's resolution. However, Korsgaard is also not (of course) saying that agency always in fact wins. So, if the resolution is an autonomous action

agency decides the conflict. Which is to say, agency decides the conflict because autonomous actions are actions which are decided in a principled manner and deciding things in a principled manner is the activity of your agency.

So, our agency prescribes principles and laws, while other elements of our constitution prescribe in some different sense: the relationship between agency and the process of self reflection (deciding what to do) is what makes the prescriptions of agency special. Smith provides a similar solution to this problem which helps explain Korsgaard's position. Smith (2015) solves the problem he presents with a reconstruction of Korsgaard's point:

[D]oes the fact that we are essentially both agents and human beings entail that we face a deliberative dilemma when it comes to [conflicts between the prescriptions of agency and the prescriptions which follow from being a human being]?

The answer is no to both questions. We do not have incommensurable reasons because only the demand relative to our function as agents is analytically tied to the concept of a reason for action. (p. 194)

The solution to the problem is that constitutivism *does* provide a special reason to think that the necessity of agency is uniquely positioned to provide the categorical imperative. Korsgaard finds this reason, the analytic relationship between normativity and our constitution as agents, in the Kantian approach. The idea is that normativity can be derived from the necessity of agency because exercising our autonomy entails the task of self constitution and our autonomy *is* the activity of making principles for ourselves. Hence, the principles of normativity can only come from our autonomy, and therefore the activity of self constitution, because no alternative element of our constitution provides laws.

In *Groundwork of the Metaphysics of Morals* Kant (1785/2011) argues this point by explaining that exercising our autonomy and the categorical imperative are one and the same thing:

Autonomy of the will is the property of the will by which it is a law to itself (independently of any property of the objects of volition). The principle of autonomy is, therefore: to choose only in such a way that the maxims of your choice are also included as universal law in the same volition. (4:441).

Lawgiving and the will are one and the same thing, according to Kant, in the sense that the will is free, autonomous, when and because it is the author of its own laws. Kant (1797/1999) argues in *The metaphysics of morals*, like Korsgaard after him, that for this reason agency and practical reason are the same:

The faculty of desire whose internal ground of determination and, consequently, even whose likings are found in the reason of the subject is called the *Will*. Accordingly, the Will is the faculty of desire regarded not, as is the will, in relation to action, but rather in relation to the ground determining will to action. The Will itself has no determining ground; but, insofar as it can determine will, it is practical reason itself. (214)

So, for Kant (like Korsgaard) the relationship between normativity, agency, and practical reason entail that agency is not something that can be in competition with other elements of our constitution for the grounding of normativity. Normativity cannot be grounded in anything other than the autonomy of the will *because it is practical reason*. Notice that Kant is making the same

point that Korsgaard and Smith provide in order to solve the problem of alternative sources of normativity. As Smith summarises, and Kant and Korsgaard argue, agency is *special* in the sense that it is the only element of our constitution which can ground normativity because the principles of normativity and autonomy are one and the same.

These problems are similar because they explore problems that result from the relationship between necessity and the objectivity of the normativity derived from agency. Smith's problem that we have multiple inescapable elements of our constitution and the shmagency problem are both attempts to demonstrate that objective normativity cannot be derived from agency. As explained, the problem Smith summarises is easily solved by points already provided by Korsgaard, however, this solution will not solve the shmagency problem because, as I alluded to earlier, the shmagency problem critiques the derivation of normative necessity from non-normative necessity, and this solution does not solve *that* problem. So, even though Korsgaard can explain why agency's privileged role in the process of self reflection is special, this does not, in and of itself, entail that we ought to endorse *that* privileged role. While Korsgaard, Smith, and Kant have explained why agency must be endorsed over and above any other element of our constitution, this does not preclude us refusing to endorse *any* element of our constitution. Which is to say, the shmagency problem has still not been answered even though some potential candidates have been precluded: it could be helpful to think of the shmagency problem rephrased as follows, 'Ok, so we cannot endorse our animal nature in place of our agency but that does not require me to endorse agency itself: so, I ask again, why be an agent?'; the open question, so to speak, remains open regardless of how difficult it is to actually specify what the alternative source of normativity is, or even could be.

In summary, the shmagency problem applies to Korsgaard's constitutivism because it is a critique of her derivation of normative necessity from non-normative necessity. Korsgaard argues that we cannot escape the activity of practical reason and undertaking this activity entails endorsing agency. Enoch replies that the inescapability of agency cannot entail that we *ought* to endorse agency because the inescapability of agency is a *non-normative* necessity: agency might be our plight, but that does not entail that we should endorse our plight. If we do not have a reason to endorse agency, then we do not have a reason to endorse the normativity derived from it. So, Korsgaard is required to provide a reply to Enoch which explains why the inescapability of agency provides a *normative* necessity. The nature of practical reason will not help, because it is merely an element of the non-normative necessity which is agency. Korsgaard has not given a reply to the shmagency problem, but she has given a reply to a similar problem which can be developed into a reply to Enoch.

2.4 The bad action problem

Before explaining the similarities between the bad action problem and the shmagency problem, I will analyse the bad action problem to explain the problem it poses for Korsgaard's constitutivism. The underlying similarity between the two problems will become increasingly apparent as this analysis develops, but this similarity will be explored in the next section. The bad action problem demonstrates that a subject can coherently provide different answers to. . . . than Korsgaard's theory predicts. Cohen (1996) puts forward the bad action problem in "Reason, humanity, and the moral law" (which is a chapter in Korsgaard's book *The Source of Normativity*), where he argues that "I can show that morality is *a* rational way, without being able to show that it is *the* (only) rational way)" (p. 181). This is a problem for Korsgaard's constitutivism because it entails that the moral law cannot be *necessary* in the manner her theory requires in order to ground the objectivity of normativity in agency. Cohen is attempting to demonstrate that morality is not defended as a matter of rational requirement. Rather, he argues, it is something defended by the moral agent that endorses it. So, according to Cohen, he can demonstrate that multiple answers follow from Korsgaard's approach to grounding normativity. He demonstrates why this distinction becomes a problem, why it is incompatible with the necessity of the moral law, by providing an example of a mafioso who believes he should live by his mafia code of honour rather than the moral law. It appears, according to Cohen's presentation of the situation, that the mafioso cannot be convinced that they ought to endorse the moral law instead of the mafia code; at least, that they cannot be convinced to do so by reference to any element of their own constitution. So, bad action is a problem for Korsgaard's constitutivism because she cannot appeal beyond reason to explain why we ought to endorse the moral law. Reason cannot make that endorsement because *multiple* normativities appear to be coherent with reason and, furthermore, there does not appear to be any way to compel an individual who is already endorsing a different normativity to endorse Korsgaard's instead.

Cohen's bad action problem creates this problem for Korsgaard's constitutivism by attempting to demonstrate that because the agent is the creator of the moral law the agent cannot also be bound by the moral law. Cohen (1996) explains this in the beginning of his critique:

You might think that, if you make the law, then that law binds you, *because* you made it. For, if you will the law, then how can you deny that it binds you, without contradicting your own will? But you might also think the opposite. You might think that, if you are the author of the law, then it *cannot* bind you. For, how can it have authority over you when you have authority over it? How can it *bind* you when you, the *lawmaker*, can change it, at will, whenever you like? (p. 167)

Korsgaard's constitutivism appears to forgo the authority of the moral law when it grounds it in the constitution of the agent. This authority is missing because the grounding for the moral law, the constitution of the agent, is capable of making alternatives to the moral law and those appear to be just as well grounded as the moral law itself because *it is the constitution of the agent which leads to both*. So, as Cohen argues the point, if the agent's *own constitution* leads to multiple *different* normativities, by which I mean multiple solutions to normative problems, for example Korsgaard's moral law or the mafioso's code of honour, then those different

normativities appear to be grounded in the manner Korsgaard's constitutivism describes. Furthermore, Korsgaard cannot appeal to something beyond the agent to resolve this dispute, because the agent is the lawmaker so the resolution must, if Korsgaard is correct, come from the agent.

This inability to appeal beyond the agent is problematic because, as Cohen argues, if the agent solves this problem by endorsing a normativity other than Korsgaard's moral law, there does not appear to be anything left for Korsgaard to say to compel them otherwise. Korsgaard has a reply to this point: she argues that practical reason, utilised appropriately, entails the moral law, and so anyone who has used their practical reason inappropriately is simply in error and so, presumably, the answer is to demonstrate or explain this to them, and if they are rational, they will realise their error and the problem is solved. However, Cohen's point is that there does not appear to be a method of demonstrating to such an individual that they have made an error of this kind. If one disagrees about what follows from practical reason and one is being coherent, then there are no grounds *within one's own constitution* which can prove to you that you have made an error.

Notice the similarities this has with Velleman and Enoch's disagreement about internal and external questions. In *How we get along* Velleman (2009) replies to Enoch's shmagency problem by arguing that normative questions that are external from agency cannot be asked, or, at least, cannot be answered, because they are defective in a particular sense (see §§ 1.4 and 1.5) (pp.142-144).⁴¹ Enoch (2011a) replies to Velleman in "Shmagency Revisited" where he argues that questions external from agency demonstrate why the shmagency problem undermines the constitutivist maneuver (pp. 220-229). The distinction between internal and external questions is a disagreement about whether or not normative questions that do not assume agency make sense. This debate, in its most direct form, takes place between Enoch and Velleman, but is crucial to the prospects of Kantian constitutivism in general because it is an argument over the nature of normative questions. Enoch's shmagency problem relies on the agent asking if they ought to be an agent which is, in a particular sense, a question *external to agency*. It is an external question in the sense that it does not *assume* agency in either the asking of the question or where it looks to for the answer. Enoch's point is that asking a normative question which does not utilise agency in either the asking or answering of the question demonstrates that (all) normativity cannot be grounded in agency. Cohen's bad action problem makes the same underlying contention: in both cases the problem is that an appeal *beyond one's own constitution* is required to demonstrate that one should endorse agency. In order to demonstrate that one should not be a mafioso, for Cohen, or a shmagent, for Enoch, the constitutivist is asked to explain the endorsement of agency *without reference to the*

⁴¹ This terminology, external and internal questions, is used by Luca Ferrero in "Constitutivism and Inescapable Agency" (2009) in relation to questions internal or external to agency (p. 306) and Enoch (2009) in relation to Velleman's reply to the shmagency problem. Ferrero uses this terminology in his explanation of the shmagency problem and I have extended this terminology to Velleman because it provides an accurate shorthand for explaining the difficulty of normative questions that do not invoke agency in the context of constitutivism.

authority of agency as such. This is a point I will return to later, but it benefits the reader to identify that this is the point that both the bad action problem and the shmagency problem utilise to attack the constitutivist maneuver.

Cohen's (1996) point, the inability to appeal beyond the agent's own practical reason costs Korsgaard the ability to demonstrate that an agent is in error, unless the agent is being outright incoherent; as he explains the point:

Kant thought that if the moral law came *just* from my own will, then it would have no claim on me, rather as the law of the sovereign has none over the sovereign in Hobbes. If, on the other hand, the law was *just* externally imposed, and did *not* come from my own will, then it would be heteronomous slavery for me to obey it, and the challenging argument that Hobbes uses about the citizen, that he must obey the law because it is his *own law*, he must obey it on pain of inconsistency, would not be available. (pp. 171)

Cohen's point is that grounding normativity has *both* external and internal requirements. If one imposes the moral law oneself, entirely on one's own, then there is no particular reason to endorse one rendition of the moral law over another and if someone else imposes the moral law, on the individual, then there is no good reason for me to willingly endorse this other person's rendition of the moral law.

There are two key points at work in Cohen's critique: the first is the notion of different possible normativities, different renditions of the moral law or different 'moralities', and the second is the notion that the grounding of normativity must be legitimate in a sense that does not entail 'slavery' to reasons you yourself do not endorse. The first notion argues that Korsgaard's constitutivism cannot derive *one particular* moral law from the nature of practical reason, because there are multiple potential normativities (multiple potential variations of a 'moral law') which are consistent with practical reason. The second notion argues that because the agent must play a crucial role in their endorsement of the moral law, constitutivism cannot force or compel one to endorse the moral law without some element of consent or cooperation; by consent or cooperation I mean that one cannot simply be instructed to concede to the authority of the moral law, one must be compelled *by one's own reason* to *endorse* the moral law.

Cohen's hypothetical skeptic has a moral code, it is just not Korsgaard's. This moral code is not internally inconsistent, so from the skeptic's standpoint it appears a legitimate normativity. At least, according to Cohen and in line with what his critique requires, it is legitimate when measured by what follows from the nature of practical reason. This is the first notion, the point being that if the only measure of a potential moral law is the constitution of practical reason, then the 'candidate moral law' needs only to be coherent in its role as a law of action. Furthermore, the hypothetical skeptic endorses this moral code and will not yield that endorsement to outside influence unless that influence can convince them that they are wrong (simply insisting he is incorrect will not change the skeptic's mind). This is the second notion, the point being that the skeptic will not yield his point unless you can explain why he is wrong. Between both of these notions, Korsgaard appears to have no ability to convince the skeptic of her constitutivist theory, despite her approach entailing that (assuming the skeptic is rational)

she must have the tools to do so: she cannot simply ignore the skeptic, because the possibility of the skeptic's existence demonstrates that her constitutivist theory does not necessarily follow from how we are constituted, and she cannot dismiss the skeptic's position due to a lack of merit because the skeptic has reached their position (the flawed moral law, the mafioso code) in the appropriate manner - in accordance with their constitution. If Cohen is correct, then this skeptic is not inconsistent, so there must be some reason the skeptic is wrong that is not due to the relationship between the skeptic's moral code and their constitution, and Korsgaard cannot explain to them what that problem is.

Regarding the first notion, it is important for Cohen's critique that there are different possible renditions of morality (the moral law or other normativities), which are coherent with practical reason, because if there were only one rendition of the moral law that followed from the nature of practical reason, then Korsgaard could simply reply to any skeptic that they are being incoherent by even purporting to disagree with the moral law. Cohen expects that Korsgaard might argue that any skeptic would be incoherent to even suppose an alternative. Or, rather, as Cohen (1996) explains, he expects that Korsgaard needs to be able to put forward this line of argument:

*If morality is to do with law, then the liaison between morality and practical identity is questionable, since the commitments that form my practical identity need not be to things that have the *universality* characteristic of law. Practical identity is a matter of loyalty and identification, and whereas there is indeed such a thing as loyalty to general principles, there also exists loyalty to family, to group, to another individual, and no credible characterization of what practical identity is, in general terms, would yield a general priority for principled over particularistic identifications. (pp. 174-175).*

Cohen is arguing that Kant argues we must be moral or be irrational, but Kant can only argue that because he appeals beyond *human* reason which is something Korsgaard cannot do (p. 174). The idea of a difference between 'human reason' and 'reason as such' is that there is something external from the constitution of humans in particular that grants reason unequivocal authority. Cohen is arguing that the authority of Kant's moral law comes from this source while Korsgaard has surrendered her ability to appeal to this same source of authority for the moral law because she is founding it in our constitution.⁴² Instead, Korsgaard's argument is that we must be moral or sacrifice our practical identity.

⁴² I think a disagreement between Cohen and Korsgaard on how to interpret Kant on this point may be underlying the disjunction between their positions. Or, if not interpretations of Kant as such, then a disagreement about what a reasonable Kantian position might be. One might think, in support of Cohen's interpretation, that because Kant puts forward transcendental arguments he is appealing to something inherently beyond the self: one might think this on the grounds that when Kant's arguments transcend something to attain the truth, it is the self, in some sense, that the arguments are transcending. Alternatively, one might argue that it is not the self that one is transcending, but elements of the self: one might think this on the grounds that there is no sense in which we can *truly* transcend the self, because to do so would preclude attaching the 'I think' to the resulting propositions, so what is transcended are limiting elements of experience and the self but *not* the self in its entirety.

So, the first notion at work in Cohen's critique of Korsgaard's constitutivism points out that there is a disjunction between the notion of moral law and the requirements of practical reason. Remember that according to Korsgaard's theory the relationship between practical reason and autonomy entails the nature of our practical identity, which in turn entails the moral law. The disjunction Cohen asserts is that it is not clear *human reason* in its own right entails the moral law to any greater extent than it entails other candidate moralities. Cohen's summarises his criticism of Korsgaard's theory of practical reason:

If, as Korsgaard says, 'the necessity of acting in the light of reflection makes us authorities over ourselves', then we exercise that authority not only in making laws but also in issuing singular edicts that mean as much to us as general principles do. . . . And whether or not the moral *must* be law-like *if* it is prescriptive, Korsgaard says that it is law-like, yet it is just not true that every claim on me that survives reflection is, or, presupposes, a law. (p. 176).

The problem, for Korsgaard, is that there does not appear to be any reason to endorse the laws that follow from our practical identities instead of the singular edicts, particular prescriptions, or one-off endorsements that also follow from practical identity. Hence, Korsgaard's solution is not *necessarily* universally prescriptive.

Cohen argues that practical identity is composed of myriad components that appear to have normative force, or at least some relationship to normativity, irrespective of their relationship to universal law. Practical identity is composed of myriad components in the sense that any given subject possesses various commitments, relationships and so on, that compose their identity and that have weight in the exercising of the subjects' practical reason. Cohen supports this argument by pointing out that a parent who saves their child, or a husband who saves their wife, does not do so because of an appeal to a law but because of some other aspect of their identity (pp. 175-176). So, "[w]hat the reflective structure [of my mind] requires, if anything, is not that I be a law to myself, but that I be in command of myself" (Cohen, 1996, p. 176). This point conflicts with two of Korsgaard's (1996b) key claims: firstly, her claim that obligations are reactions to threats on our own identity and that our relationship with practical reason is our deepest (most important) identity (pp. 102-103), and, second, her claim that our experience of our own minds and the nature of reflection demonstrate that practical reason, in its lawgiving capacity, is the origin of normativity (pp. 92, 100).

Korsgaard makes these claims to establish that the moral law follows from our own constitution and that they are both crucial to her theory. Regarding the first, she argues that normativity entails obligations as reaction to threats to our identity:

An obligation always takes the form of a reaction against a threat of a loss of identity. But there are two important complications, and both spring from the complexity of human identity. One is that some parts of our identity are easily shed, and where they come into conflict with more fundamental parts of our identity, they should be shed. (Korsgaard, 1996b, pp. 102-103)

The point is, according to Korsgaard, that our identity and the moral law are fundamentally intertwined. For this reason, moral obligations function as a reaction to a threat to our own

identities: obeying our moral obligations is demanded by what we are. This claim *is* Korsgaard's constitutivism: the constitution of our practical identity entails normativity. The universalizability of the obligations that follow from the constitution of our identity is, as Korsgaard (1996b) goes on to explain, a fundamental demand we place on ourselves:

Kant points out that when we violate the laws of the Kingdom of Ends we must be making exceptions of ourselves, because we cannot coherently will their universal violation. In one sense, a commitment to your own identity — that is, to your integrity — is supposed to solve that problem. But . . . [because an individual can *occasionally* violate the universal law without permanently damaging their own identity], the problem reiterates within the commitment to your own integrity. The problem here does not come from the fragility of identity, but rather from its stability. (p. 103)

This stable identity is our autonomy, our faculty of reason where the self and practical reason meet, and it is this identity which is the same identity that is threatened by a denial of moral law. The point is that our practical identity, the nature of autonomy and practical reason expressed as the self, is both the stable foundation of how we are constituted and incompatible with the violation of the moral law; as Korsgaard completes the point by explaining:

Obligation is always unconditional, but it is only when it concerns really important matters that it is *deep*. Of course, since we can see that the shallowness of obligation could give rise to problems, we must commit ourselves to a kind of second-order integrity, a commitment to not letting these problems get out of hand. We cannot make an exception 'just this once' every time, or we will lose our identities after all. . . . What we have established is this. The reflective structure of human consciousness requires that you identify yourself with some law or principle which will govern your choices. It requires you to be a law to yourself. And that is the source of normativity. So the argument shows just what Kant said that it did: that our autonomy is the source of obligation. (p. 103-104)

Our practical identity is the identity which connects practical reason to our autonomy. Korsgaard's point is that we are constituted, fundamentally and at the deepest level of what we ourselves are, as lawmakers and that deep constitution is the grounding for normativity.

So, to identify the significance of her line of argument, Korsgaard's claim that obligations are reactions to threats to our deepest identity is in contention with Cohen's point that the reflective structure of our mind merely requires that we are in command of ourselves but not that we are laws to ourselves. If Cohen is correct, Korsgaard has overstated her claim about what follows from autonomy: if the reflective structure of our mind does not entail that we must be laws to ourselves then the moral obligations which follow from those laws are not reactions to threats to our own identity. Or, at least, they are not *necessarily* threats to our own identity, because our identity would not necessarily entail that we follow laws. This is the first key claim that Korsgaard's theory requires that is threatened by Cohen's rejection of the law giving requirement of our identity.

The second key claim of Korsgaard's that Cohen's claim threatens is her argument that the law giving nature of self reflection is provided by the nature of our experience of our own mind.

Korsgaard's claims are not as peculiar as they might first appear, she is not arguing that we have accurate knowledge about our own mental states as such:

The human mind is self-conscious. Some philosophers have supposed that this means that our minds are somehow internally luminous, that their contents are completely accessible to us — that we can always be certain what we are thinking and feeling and wanting — and so that introspection yields certain knowledge of the self. Like Kant, and many philosophers nowadays, I do not think that this is true. Our knowledge of our own mental states and activities is no more certain than anything else. (p. 92)

This point is important because it might appear, on the face of the matter, that Cohen is merely contesting some poorly founded empirical claims Korsgaard has made about our knowledge of our own mind. However, this is not the type of claim Korsgaard is making and Cohen's critique is not that she has done so. Rather, as Korsgaard (1996b) argues, immediately after the above excerpt, that we see the relationship between the moral law, self reflection, and autonomy when we examine our own minds and discover a law making *structure*:

But the human mind *is* self-conscious in the sense that it is essentially reflective. I'm not talking about being *thoughtful*, which of course is an individual property, but about the structure of our minds that makes thoughtfulness possible. A lower animal's attention is fixed on the world. Its perceptions are its beliefs and its desires are its will. It is engaged in conscious activities, but it is not conscious *of* them. That is, they are not the objects of its attention. But we human animals turn our attention on to our perceptions and desires themselves, on to our own mental activities, and we are conscious *of* them. That is why we can think *about* them. (p. 93)

Korsgaard is grounding her theory in this observation of the structure of our own mind. Normativity, she argues, is the problem that arises from this structure of self reflection and where we find the solution (1996b, p. 93). Reasons for action, in this arena of self reflection that Korsgaard describes, are the result of this process: "The normative word 'reason' refers to a kind of reflective success" (1996b, p. 93). She goes on to argue that this reflective success, the notion of reasons for action and the problem of normativity (deciding what to do), is also the notion of the mind acting under the idea of freedom (1996b, p. 94) and then that the exercising of this freedom is the activity of making laws (1996b, pp. 97-8, 100).

I have provided Korsgaard's presentation of the key element of our constitution that she uses to ground normativity: the self reflective structure of our conscious experience. This is the presentation that Cohen's critique focuses on. Cohen's point is that not *only* law making behaviour follows from this self reflective structure; there are other coherent stories, so to speak, that can be told about what is constitutive of ourselves given the self-reflective structure of our conscious experience. This critique is an assertion that Korsgaard has misunderstood what she is experiencing when she examines the structure of her own mind: Cohen is arguing that she has provided an investigation of a particular experience (a phenomena) rather than an explanation of the necessary nature of how our mind constructs experiences (1996, p. 183). To explain this in Kantian terms: Korsgaard claims to be grounding her normativity in a transcendental apperception by providing a transcendental argument which explains that the moral law is what follows from the necessary structure of our own conscious experience, and

Cohen replies that her apperception is not transcendental because it is not the necessary explanation of the structure she identifies. If Korsgaard's examination of the structure of our conscious experience (apperception) is not transcendental, if it is not what must follow from the examination, then her attempt at grounding normativity fails to provide a reason to endorse the moral law she proposes instead of whatever else follows from the same process she undertakes: Korsgaard's theory must be the only position that follows from her examination of the nature of our minds for it to be necessary, and it must be necessary because that is what grounds its objectivity.

Cohen provides thought experiments to demonstrate counter examples to Korsgaard's theory in order to demonstrate that she has failed to derive objective normativity from agency. Consider, once again, the case of the subject that saves their drowning child because of their relationship with that child rather than because of an obligation to a law they themselves constructed. Cohen (1996, p. 175) refers to a point made by Bernard Williams (1981) in "Persons, character and morality". Williams argues that acting to save someone based on your relationship with them, is a sufficient explanation of why one does and ought to save one's wife (1981, p. 18). There is no need to appeal to some other justification, such as a rule dictating that one ought to save one's wife. Cohen argues that this is a counterexample to Korsgaard, because acting for the sake of one's relationship *without any further underlying appeal* appears to be a case of an agent acting from something other than a law.

Cohen's point is that we *do* act without reference to laws and, furthermore, that in some instances we appear to act without reference to laws *and be coherent with our own constitution and identity while doing so*. To demonstrate why this is a problem, consider Korsgaard's (1996b) summary of her derivation of our law making constitution from the structure of our minds:

The reflective structure of the mind is a source of 'self-consciousness' because it forces us to have a *conception* of ourselves. As Kant argued, this is a fact about what it is *like* to be reflectively conscious and it does not prove the existence of a metaphysical self. From a third-person point of view, outside of the deliberative standpoint, it may look as if what happens when someone makes a choice is that the strongest of his conflicting desires wins. But that isn't the way it is *for you* when you deliberate. When you deliberate, it is as if there were something over and above all of your desires, something which is *you*, and which *chooses* which desire to act on. This means that the principle or law by which you determine your actions is one that you regard as being expressive of *yourself*. To identify with such a principle or way of choosing is to be, in St Paul's famous phrase, a law to yourself. (p. 100)

Korsgaard's argument is that when you consider the reflective structure of your own mind you find that your deliberation is an act of law making and this structure, practical reason, is a deep element of your identity that entails obligations. These obligations arise because failure to fulfil them would threaten your identity as a lawmaker who is in control of your own actions. Your autonomy is the law-making structure of your mind and that entails your practical identity. Cohen's reply is that we *can and do* (in at least some instances) act autonomously with no reference to law making yet without threatening our identity, such as when saving one's wife *just*

because she is one's wife, which entails that there is *more than just law making* that follows from the reflective structure of our conscious experience. This is the second key claim of Korsgaard's that Cohen's claim threatens. If Cohen is correct that coherent self constitution does not *necessarily* entail law making then Korsgaard's moral law does not entail the moral law.

However, Cohen's point and the critique underlying it is not limited to this scope. The underlying problem remains *even if* Korsgaard can establish that obligations arise as a result of threats against our identity as lawmakers. That is, even if we do have a law making nature, this *in and of itself* does not entail that one law in particular follows from our constitution. Even lawmakers cannot, simply because they are lawmakers, determine that one potential morality should be endorsed over another. It is in this context that Cohen (1996) presents the thought experiment of a Mafioso who:

does not believe in doing unto others as you would have them do unto you: in relieving suffering just because it is suffering, in keeping promises because they are promises, in telling the truth because it is the truth, and so on. Instead, he lives by a code of strength and honour that matters as much to him as some principles I said he disbelieves in matter to most of us. . . . What the mafioso takes to be his obligations can be made to fit Korsgaardian formulae about loss of identity as much as what most of us would regard as genuine obligations can be made to fit those formulae. So it looks as though what she has investigated is the experience of phenomenology of obligation, not its ground or authenticating source. (p. 183)

Cohen's point is that Korsgaard's theory does not provide sufficient grounding to derive the moral law instead of some other morality or alternative moral code. Notably, this criticism does not entail that the moral law as Korsgaard proposes it is implausible as such, or even that another moral code is plausible. Rather, the problem is that the moral law proposed by Korsgaard does not follow *simply* from the constitution of our agency. So, if Cohen's mafioso represents another moral code which is coherent with our constitution, then Korsgaard's grounding is insufficient because it does not entail the moral law exclusively: our constitution entails whatever moral laws, codes, and so on that follow from it. Given that, if Cohen is correct, multiple moralities follow from our constitution, there would need to be some further reason to endorse Korsgaard's morality, which would entail that her grounding is insufficient because it would also rely on this further reason. This is essentially the point of the shmagency problem critique raised by Enoch that I discuss later: arguing that the reason to endorse one moral law rather than another must be external to one's constitution is the same type of critique as arguing that the reason to endorse agency must be external to one's constitution.

Remember that Korsgaard (1996b) does argue that we can *sometimes* knowingly disobey the moral law without seriously threatening our identity, that is, without threatening the coherence of our constitution:

The problem here [of an agent who makes an exception of herself by choosing to disobey the moral law] does not come from the fragility of identity, but rather from its stability. It can take a few knocks, and we know it. The agent I am talking about now

violates the law that she is to herself, making an exception of the moment or the case, which she knows she can get away with. . . . We cannot make an exception 'just this once' every time, or we will lose our identities after all. . . . That, by the way, is why even people with the most excellent characters can *occasionally* knowingly do wrong (pp. 102-103).

However, her argument here still relies on the point that there is disharmony, incoherence, between disobeying the moral law and our constitution (our identity). Cohen's point is that sometimes *we are not lawmakers at all*. Either Cohen's examples of agents who are coherently self constituted but are not dealing in Korsgaard's moral laws are impossible, or Korsgaard's theory fails to ground normativity in the necessary nature of our own constitution.

The particular example (Cohen uses a mafioso) is not important: the problem Cohen poses for Korsgaard is that *any* example of someone performing an act of significant moral weight without either being a lawmaker in the manner Korsgaard conceives *or* threatening their own identity by failing to be such a lawmaker is a counterexample to Korsgaard's theory. By an act of significant moral weight, I mean an act of self constitution, an act that according to Korsgaard, but not according to Cohen, is (and *must be*) inherently an act of lawmaking. So, if we can find or conceive of an agent who acts because of particular reasons, such as relationships with other agents, that they do not intend to propose as universal law or an agent who puts forward a moral code distinct from Korsgaard's *and* that agent is coherently constituted with their own identities, then Korsgaard's theory has failed to ground normativity in how we are constituted. Which is to say, it cannot be the case that the moral law necessarily follows from how we are constituted *unless* the types of counter examples posed by Cohen are not examples of coherently constituted agents. Hence, Korsgaard must explain why the agent acting based on reasons they do not will as laws and agents acting based on a moral code or law distinct from Korsgaard's are not coherent agents.

Cohen's second key point is more easily examined after explaining its role in his overall argument. Cohen's second point, the notion that the grounding of normativity must be legitimate in a sense that does not entail heteronomous slavery (1996, p. 171), supports the first point by demonstrating why that first point is deeply problematic for Korsgaard's theory. Heteronomous slavery, in this context, means that the legitimacy of Korsgaard's grounding for normativity must be endorsement *by the agent* and not from some external source (such as another agent). This supports Cohen's first point, that there are multiple moralities which are coherent with how we are constituted, because together they reveal that Korsgaard's theory does not have the tools required to demonstrate why one ought to endorse her moral law. The critique can be reconstructed as follows:

Premise 1: Multiple moralities are coherent with how we are constituted.

Premise 2: Korsgaard's theory entails that normativity must be endorsed by the agent themselves, based on their own constitution, for it to be legitimate.

Conclusion: Korsgaard's theory cannot demonstrate why one ought to endorse 'the' moral law

Given that Korsgaard's theory can *only* appeal to one's constitution to demonstrate why one ought to endorse the moral law and that our constitution is coherent with multiple competing claims about the nature of morality, then Korsgaard cannot demonstrate why one ought to endorse the moral law.

So, according to Cohen, Korsgaard cannot demonstrate *based only what follows from our constitution* that one should endorse the moral law, as she conceives it, *instead of endorsing something else that follows from our constitution*. The point of adding this qualifier to the conclusion is to acknowledge that one who already found Korsgaard's moral law (instead of, say, a mafioso honour code) appealing might also find her theory compelling without that threatening the validity and applicability of Cohen's critique. The point of his critique is to demonstrate that her theory cannot demonstrate that one ought to endorse her moral law simply because it follows from how we are constituted and this does not mean that someone who already finds it compelling will not continue to do so. Rather, the point of the critique is demonstrated by the notion that a subject who found some other morality (such as the mafioso's honour code) compelling could not be convinced to instead endorse Korsgaard's moral law *without something more than, merely, showing them the moral law is also a coherent candidate*. This is why Cohen (1996) accuses Korsgaard of having merely discovered "the experience of phenomenology of obligation, not its ground or authenticating source" (p. 183). The point of this accusation being that if Korsgaard's moral law does not necessarily follow from how we are constituted (because other, conflicting, moralities also follow) there might be some *other* explanation for the apparent appeal of Korsgaard's theory, such as that the examination of our own mind she utilises to establish that normativity is grounded in the structure of self-reflection provides phenomenological support for the moral law.

Cohen's second point, premise 2, demonstrates the severity of the problem posed by his first point Cohen directs this second point at the part of Korsgaard's (1996b) work where she explains:

Kantians believe that the source of the normativity of moral claims must be found in the agent's own will, in particular in the fact that the laws of morality are the laws of the agent's own will and that its claims are ones she is prepared to make on herself. The capacity for self-conscious reflection about our actions confers on us a kind of authority over ourselves, and it is this authority which gives normativity to moral claims. (pp. 19-20)

Cohen quotes this same excerpt (1996, p. 182) while explaining that Korsgaard's theory entails that one's own constitution must be the source of legitimate normativity. While Cohen presents this excerpt as representing Korsgaard's own position, it is worth noting that she presents this as the Kantian precursor to her theory (1996b, p. 20). However, I agree with Cohen's implied assertion that this Kantian precursor remains representative of the position she ultimately puts forward (at least, insofar as it is relevant to his critique). Cohen picks out another point of Korsgaard's (1996b) work, which is explicitly crucial to her constitutivist theory, where she

argues that “your reasons express your identity, your nature; your obligations spring from what identity forbids” (p. 101); this point supports Cohen’s assertion that Korsgaard relies on the “Kantian belief that the source of the normativity of moral claims must be found in the agent’s own will” (p. 19). Although Korsgaard’s claim is, specifically, that the authority must come from our *identity*, the relationship between the agent’s will and the agent’s identity is, for Korsgaard, fundamental in a manner that allows Cohen’s point to stand. Remember, that our practical identity, the deep identity that makes us who and what we are, *is* our autonomy and our practical reason (our nature as a lawmaker) and so is essentially our will.

The key point of disagreement between Cohen and Korsgaard is about the nature of the self. So, on the face of it, Cohen’s point that Korsgaard’s theory entails the legitimacy of normativity’s grounding must come from oneself is merely Korsgaard’s own point that the authority of normativity must come from our own identity as lawmakers. However, this is not quite true because Cohen means something subtly different, than Korsgaard, by what it is for something to be legitimized by oneself. Cohen disagrees with Korsgaard about what the self fundamentally *is* and therefore does not agree with her about what it entails for normativity to be grounded in the self. This disagreement, about the nature of the self that grounds normativity, is what allows Cohen to use Korsgaard’s point, that the authority of normativity must come from our own identity, as part of his critique of Korsgaard’s constitutivism. Examining the point Cohen (1996) makes helps explain on how this different understanding of legitimizing oneself matters:

I think that [Korsgaard’s theory] is powerful stuff for me, the moral agent, to say to my interrogator [someone who is asking why I endorse the moral law], but it is entirely impotent when addressed to someone who, being disaffected, *ex hypothesi* finds no actions to be worth undertaking, or, more pertinently and more plausibly, no *moral* ones. It is powerful to say ‘I couldn’t live with myself if you did that’, but off the mark to say ‘you couldn’t live with yourself if you did that to someone who is evidently managing to do so. (p. 182)

Cohen’s point is that if we ourselves must legitimize normativity, then the force of the reasons to endorse that normativity, the ability to compel others, is incapable of performing its function in at least some cases.

Korsgaard sets her own theory the goal of being able to compel others in this manner, so Cohen takes such a failure to entail the failure of Korsgaard’s theory. As Cohen (1996) explains it, Korsgaard cannot answer the same question her theory puts forward as the question of normativity:

The intransigent person who insists on a justification for being moral is close to saying: ‘As far as my deep identity goes, I feel no force in morality’s claims’. To that little can be said, so that, if we set Korsgaard’s answer to the normative question against her own too demanding description of that question, then her answer to it does not work. (p. 183)

The problem is that her theory cannot answer the normative question as Korsgaard herself presents it. So, with Cohen’s conclusion, and its relationship to his first point (premise 1 as presented earlier), established we need to examine what the normative question is in order to explain why the disagreement between Korsgaard and Cohen, regarding what it means for the

self to legitimize normativity, is crucial to Cohen's critique. Ultimately this will demonstrate that, in conjunction with the other, related, lines of reasoning, some of which have already been presented, the same disagreement about the role of the self, and the nature of the self, is underlying *both* the bad action problem and the shmagency problem. Because Korsgaard grounds normativity in practical identity, in what the self necessarily constructs, her theory cannot be separated from the conception of the self which facilitates this grounding and both the bad action and shmagency problem function by disagreeing with that conception of the self (specifically, with the epistemic role played by the construction of practical identity). While the substantiation of this claim that a disagreement about the nature of the self underlies both problems is the ultimate result, the immediate task is explaining the relationship between Cohen's use of his second point (premise 2) and Korsgaard's presentation of the normative question.

Korsgaard frames her discussion of the normative question as an explanation of the foundations of morality, because understanding the nature of the question is a method of understanding how to explain why answers to moral questions are real or objective (1996b, pp. 7-8, see also pp. 8-48). In part this takes the form of a critique of alternative attempts, especially moral realism, to explain the foundations of normativity (pp. 18-47). What is relevant here is Korsgaard's (1996b) explanation of the problem of providing foundations for normativity:

To be successful, there are three conditions which the answer [to the normative question, how to provide foundations for morality] must meet. All of these conditions spring from the position from which the normative question arises, the first person position of the agent who demands a justification of the claims which morality makes upon him. (p. 16)

From the outset of her project, Korsgaard's point is that agents ask the moral question of themselves. There is a sense in which *all* questions are asked to, or at least of, ourselves: for example, we might consider questions we ask about the world, such as scientific questions, as being asked as 'why should *I* believe this?' or 'how do *I* explain that?'; however, Korsgaard means more than just this sense when she claims that the normative question is something the agent asks in a fundamentally first person position. What Korsgaard means is that the agent is asking what *about themselves* justifies the claims morality makes on them.

Korsgaard's point, that the agent is asking the normative question to *and about* themselves, is demonstrated by her explanation of the three conditions which are required for a successful answer to the normative question (how to provide foundations for morality). The first of these conditions, as Korsgaard (1996b) explains, is:

[T]he answer must actually succeed in *addressing* someone in that position [someone in the first-person position of agency]. It must not merely specify what we might say, in the third person, *about* an agent who challenges or ignores the existence of moral claims. Every moral theory defines its concepts in a way that allows us to say something negative about people who do that - say, that they are amoral or bad. But an agent who doubts whether he must really do what morality says also doubts whether it's so bad to be morally bad, so the bare possibility of this sort of criticism settles nothing. (p. 16)

The answer to the normative question, the explanation of the foundation for morality, must, according to Korsgaard, succeed in providing an explanation for an agent. This is the assertion which informs Korsgaard's presentation of her theory as a reply to the skeptic and, in turn, Cohen's criticism that her theory fails to provide a suitable explanation to an agent with these types of doubts. The crucial point is that the answer to the normative question must be relevant to agents from their own perspective and *even when they doubt the normative theory in question*. The reason why this condition is plausible is revealed in the next two conditions.

The second condition required for a successful foundation for morality is, explains Korsgaard (1996b), the relationship between reasons to endorse the foundation and our access to those reasons:

The second condition follows from the first. Because we ourselves are both to ask and to answer the normative question, a successful normative theory must meet a condition which is sometimes called 'transparency'. Usually this is thought of as a property of explanations. If a theory's explanation of how morality motivates us essentially depends on the fact that the source or nature of our motives is concealed from us, or that we often act blindly or from habit, then it lacks transparency. . . . A normative moral theory must be one that allows us to act in the full light of knowledge of what morality is and why we are susceptible to its influences, and at the same time to believe that our actions are justified and make sense. (p. 17)

Because the answer to the normative question must be relevant to someone in the first person position of an agent, which is Korsgaard's first condition, the moral theory that follows from the foundations laid out in the answer to the normative question must provide reasons *for the agent in that same position*. Together, these first two conditions establish, for Korsgaard, that the foundation of morality must be provided by an agent, for that agent, and usable by that agent.

Korsgaard's third condition provides the relationship between the first two conditions and the nature of the self. While the first two conditions explain the role of the self, why it is central to the normative question and dictate the requirements of a suitable foundation for morality, Korsgaard (1996b) explains that the third condition is what aspect of the self fulfils this role:

[The third condition is that] the answer must appeal, in a deep way, to our sense of who we are, to our sense of identity. As I have been emphasizing, morality can ask hard things of us, sometimes even that we should be prepared to sacrifice our lives in its name. This places a demanding condition on a successful answer to the normative question: it must show that sometimes doing the wrong thing is as bad or worse than death. (p. 17)

Korsgaard's argument, in this excerpt, is that the grounding of morality must appeal to our identities in a manner that reflects its ability to demand significant self sacrifice and there are two things meant by this: one is that a successful normative theory must explain why our lives are less important than our morals in *at least some* cases and, two, that the reason for this is because of the relationship between morality and our sense of identity. The second of these two aspects of Korsgaard's claim is more important in regards to Cohen's second key point for his

criticism of Korsgaard (that the agent must endorse the normative theory), however before exploring this further I address the first aspect of Korsgaard's claim in this excerpt.

Korsgaard's claim that morality must be able to justify self sacrifice needs addressing because it may seem peculiar. The reason it might seem peculiar unimportant to the analysis I am undertaking, however, why it is unimportant is itself important. It seems obvious that there are *at least some* cases where moral obligations are more important than your own life. While this may appear an odd claim to an egoist, it is actually a weak claim; it merely requires that there is a case in which one might favour one's moral obligations over one's life. For example, imagine a contrived scenario in which you have a choice between instantly killing yourself or everyone including yourself dying one second later. Surely in such a case you would choose to endorse your moral obligation to save everyone over the one additional second of existence.

Notice that it does not matter for at Korsgaard's third condition *why* you think morality can entail self sacrifice. You might think that Korsgaard's claim is unfounded if she is claiming that one might endorse one's *rational obligations* over one's own life while endorsing the claim that in such extreme cases as I just outlined one might endorse one's obligation to one's own desires over one's own life. Here, I have in mind Hume's (1738/2007) claim that reason in its own right cannot motivate us to undertake an action, even preferring our slightest discomfort over the fate of the world (2.3.3.4-6). While Korsgaard, broadly speaking, *is* claiming that reason can demand we sacrifice ourselves, her third condition, in particular, for the successful foundation of a normative theory is not bound to making that claim. Her point, in this condition, is merely that moral theories must explain this type of prioritisation, regardless of how exactly the particular theory accomplishes this; the accuracy of this particular condition does not depend on whether passion or reason does the work.

The second aspect of Korsgaard's third condition for the successful foundation of a normative theory is that the moral theory's ability to demand significant sacrifice must be explained with reference to the relationship between some deep element of our identity and the nature of morality. It is this aspect of this condition which, on the face of it, supports Cohen's criticism that Korsgaard has discovered an aspect of the phenomena of morality rather than a necessary grounding of morality (1996, p. 189). This element of Korsgaard's (1996b) argument appears to support Cohen's criticism because she presents this relationship between our deep identity and morality as something we experience:

[F]or most human beings on most occasions, the only thing that could be as bad or worse than death is something that for us amounts to death — not being ourselves any more. This is not an unfamiliar thought. Most people contemplating extreme old age, hope that they will die rather than exist for years in a condition of severely diminished intelligence, altered character, or with an inability to recognize and interact with those whom they have loved for years. (p. 18)

We might consider this point as Korsgaard arguing that moral theories must explain their authority by deriving it from the relationship we have with our identity. This is why, according to Korsgaard, we are better off dead than old and feeble minded. This is an unfair restatement of

Korsgaard's argument, but pointedly so: if we interpret her argument as relying on contingent matters of preference, such as what we would be willing to endure, then Cohen's critique does indeed follow from Korsgaard's explanation of the necessary relationship between the self and the foundations for morality. Before I explain why this restatement is unfair, notice what follows from it: if our deep relationship with morality depends on what we are willing to become, then the foundations of morality are indeed intertwined with the contingent phenomena of identity, as Cohen argues.

So, as previously explained, if our relationship with ourselves entails that the foundations of morality depend on what we are willing to become, then it appears Cohen's (1996) critique establishes that Korsgaard's moral foundations lose the element of necessity present in Kant's moral philosophy, because Korsgaard derives her constitutivism from "human reason" rather than "reason as such" (p. 174). When Korsgaard asks us to examine the structure of our own minds and consider the nature of self reflection, she draws a connection between our identity and that reflective structure, the convergence of which she develops into practical identity which is crucial to her theory. If the convergence between self reflection and our identity is the bringing together of self reflection and *however we happen to conceive* our own identity then the contingency of that experience of ourselves entails Cohen's criticism that Korsgaard has merely discovered a phenomena related to her morality, rather than a necessary foundation.

This is the primary disagreement between Cohen and Korsgaard: whether the nature of our identity can be developed as a necessary foundation for morality in conjunction with the reflective structure of our mind or whether doing so will merely introduce contingent phenomena into the theories foundations. The precursor to Korsgaard's (1996b) reply to Cohen can be found where she continues from the previous excerpt while explaining the relationship between morality and our deep identity:

The thought [behind preferring death to extreme old age] is 'that would not be me any more' and one would rather be dead. If moral claims are ever worth dying for, then violating them must be, in a similar way, worse than death. And this means that they must issue in a deep way from our sense of who we are. (p. 18)

Korsgaard's point is that our identity provides reasons to prefer death over some extreme violations of the moral law because those violations can amount to losing what makes us ourselves. The crucial difference between Korsgaard's point and the position Cohen describes when he critiques her theory is that she is arguing that our nature provides a *reason to prefer* death over such a loss of identity rather than claiming that *we actually do* hold such preferences. The distinction between these two assertions is crucial to the argument between Cohen and Korsgaard because one is a claim about rational necessity and the other is a claim about contingent details of our nature.

In both cases, making a claim about contingent details of our nature or making a claim about rational necessity, the specific details and broad explanation of the can look similar, but the underlying argument is distinct. One might think, as follows from Cohen's critique (and the shmagency problem), that Korsgaard's claims about the nature of our identity and the role of

self reflection are claims about our contingent nature in a sense that entails her entire theory is founded in such contingent claims. If this is true, then it follows that Korsgaard's normative theory is grounded in contingent claims, assertions about elements of our nature that might have been otherwise, and so her moral law is not necessary after all. This line of argument will be developed in Korsgaard's reply to Cohen and further when I explain why that reply also functions as a solution to the shmagency problem.

It is true that *all* elements of our nature are, *in a sense*, contingent. But this is the same sense in which *we ourselves* are contingent: our very existence is contingent in the sense that we might not have existed. This type of contingency is what causes the disjunction between Korsgaard and Cohen because it mirrors the disjunction between, as Cohen describes it, human reason and reason as such. There is a difference between saying the existence of human beings is contingent compared to saying that the existence of elements of reason as such are, or even could conceivably be, contingent. This difference is the same distinction used by Cohen in his critique: this distinction underlies his argument that Kant can appeal to reason as such while Korsgaard can only appeal to human reason. Cohen's point is that the particulars of human reason are contingent (in the same manner as our existence and the specifics of our nature) while reason as such is not contingent.

With these differing conceptions of the contingency of reason identified, the relationship between Korsgaard's conditions for the foundation of a normative theory and Cohen's critique of her theory can be summarised. Cohen's two points are, first, that different possible normativities (different renditions of the moral law such as a mafioso moral code) follow from how we are constituted and, second, that if Korsgaard is correct, the agent must provide legitimacy to the moral law. Cohen's bad action problem argues that these two points are incompatible. They are incompatible because Korsgaard cannot establish *objective* normativity if the agent is the grounding for that normativity, this cannot be done because relevant elements of the agent are contingent, so the normativity founded in those elements will also be contingent. This argument utilises Korsgaard's own conditions for the foundation of a normative theory to demonstrate that her project is, if Cohen is correct, fundamentally flawed. Korsgaard's three conditions for the foundation of a normative theory are (1) that it must address the perspective of an agent, (2) that it must provide transparent reasons for action (reasons we can simultaneously know and use to decide what to do), and (3) that it must appeal to a sense of our identity. The tension, if Cohen's criticism is correct, is that addressing the perspective of an agent (1) and providing us with usable reasons for action (2) cannot be done while (3) appealing to a sense of our identity without sacrificing the necessity of the normativity being founded.

So, the bad action problem is that appealing to an agent's sense of identity to provide reasons for action that address the perspective of an agent removes the necessity of morality. Cohen (1996) summarises the bad action problem as demonstrating why something *beyond* the human mind must be the source of morality:

So, I return to the thought that something transcending human will must figure in morality if it is to have an apodictic character. Kant was right that, if morality is merely human,

then it is optional, as far as rationality is concerned. But it does not follow that morality cannot be merely human, since Kant may have been wrong to think that morality could not be optional. What does follow is that Korsgaard's goal is unachievable, because she wants to keep the 'must' that Kant put into morality while nevertheless humanizing morality's source. (p. 188)

The point of Cohen's critique is that Korsgaard's claim to have grounded the *necessity* of morality is incompatible with the nature of the foundations, our own constitution, because that foundation is not itself necessary in the right sense. So, while morality may be based in the constitution of agency (our constitution as humans) this is incompatible with morality being necessary and, in that sense, objective. Notice how similar this is to Enoch's shmagency problem, in both Cohen's bad action problem and the shmagency problem the critique focuses on a disjunction between the necessity of how we are constituted and the normative necessity we expect from the grounding of morality. This is the problem of normative and non-normative necessity: even if we must be human that does not entail that we must endorse what follows from our humanity.

Cohen does not appear to appreciate that his disagreement with Korsgaard on this point is problematic for his use of Korsgaard's argument about the authority of normativity. Korsgaard and Cohen disagree about what follows from the necessity of human reason, which is crucial to Korsgaard's theory, and yet Cohen persists in utilising this point to demonstrate that Korsgaard's conclusion does not follow from her argument. Cohen explains that the grounding of objective (necessary) morality cannot follow from Korsgaard's argument because of her own demanding description of the normative question (1996b, p. 183). This is a disagreement about the nature of practical identity, the role reason plays in relation to what we are at the most fundamental (deepest, to use Korsgaard's terminology) level. The point of identifying this as the crucial point of disagreement is that it explains why Korsgaard and Cohen disagree about whether necessary normativity can follow from the necessity of our constitution. The distinction between reason as such and human reason, as human reason is manifested in the reflective structure of our minds, is not something Korsgaard is going to agree with Cohen about, and this disagreement will inform her reply to Cohen. Furthermore, Korsgaard's defence of her theory based on the absolute necessity of the reflective structure of our mind also serves as a reply to Enoch's critique that normative and non-normative necessity are distinct in a manner that undermines the constitutivist approach. In both cases the problems, bad action and shmagency, are misunderstandings of Korsgaard's theory; or, more charitably, need to be rephrased for the actual point of disagreement to be identified.

The disagreement between Cohen and Korsgaard lies in the relationship between Cohen's critique that the necessity of morality is incompatible with Korsgaard's attempt to ground morality in human reason and his disagreement with Korsgaard about the role of reason in our identity. Cohen (1996) comes close to putting forward this point himself when he argues that one can set aside one's practical identity even while undertaking the activity of self reflection:

Korsgaard says that 'the normative question arises when our confidence ['that we really do have obligations'] [brackets in the original] has been shaken whether by philosophy or

by the exigencies of life', and that someone's confident affirmation of the reality of obligation will then do nothing for us. But one thing which life's exigencies can shake is a person's practical identity, and, when that happens, then Korsgaard's answer will not help. Something shatters my sense of being and obligation in the world, consequently my confidence that obligation is real. It is then useless to tell me that it lies in my practical identity to be thus obliged. When I doubt that my 'obligations really exist', or do not recognize that moral 'actions' are 'worth undertaking', I am setting aside any relevant practical identity that the philosopher might have invoked. (p. 180).

This claim that the moral skeptic, or anyone, has set aside their practical identity is where we find the crux of Korsgaard and Cohen's disagreement. So, Cohen's argument is that using our identity as the foundations for morality is incompatible with necessary morality and the method he uses to establish this argument is to point out that the particular element of our identity Korsgaard to which appeals to establish her theory is optional. Practical identity is optional in the sense that we can undertake at least some relevant reflection (some practical reason) without it (while "setting it aside").

Ostensibly, the relationship between setting aside any relevant practical identity and the disjunction between the necessity of morality and grounding morality in the constitution of agency appears to be a misunderstanding of Korsgaard's theory. That is to say, Cohen's assertion that someone can be simultaneously reflecting upon their moral commitments yet setting aside the practical identity that Korsgaard intends to invoke is a direct disagreement with how Korsgaard explains the normative question. Korsgaard's (1996b) point is that the normative question *is* an activity of reflection: "To raise the normative question is to ask whether our more unreflective moral beliefs and motives can withstand the test of reflection" (p. 47). So, when Cohen argues that her theory fails to meet the demands of the same normative question she puts forward, he makes this claim in the context of a different understanding of what practical identity is than the one Korsgaard puts forward (1996, p. 183). This disagreement, in particular, is crucial, because the nature of the normative question as Korsgaard explains it is dependant on that same understanding of practical reason and practical identity that these two philosophers disagree on.

Korsgaard's point is that to be undertaking self reflection *about one's moral obligations* is to be utilising your practical identity. So, when Cohen argues that an agent, such as his mafioso, might put aside their practical identity, and leave Korsgaard with nothing to say that is capable of compelling this agent to endorse the moral law, Cohen is denying her explanation of what the normative question is. Korsgaard's reply will be merely to point this misunderstanding out: she can inform Cohen that an agent cannot simultaneously set aside their practical identity and undertake this type of reflection; remember, Korsgaard argues that the structure of our own mind is *fundamentally* reflective and that means *fundamentally* utilises our practical identity.⁴³

⁴³ One might argue that there are incidents where our minds do not utilise our practical identity in any sense. This would undoubtedly be correct in cases where we are not reasoning *at all*. In such cases Korsgaard would be bound to claiming that those cases do not represent *our* minds - they are simply not

The point of such a reply is that any agent who set aside their practical identity would not be an example of someone who Korsgaard has failed to convince, they would be an example of someone who has *simply refused to enter into the discussion at all*. The accurate description of someone who sets aside their practical reason is not a mafioso who listens to Korsgaard's theory and simply cannot see why her position is compelling: rather, someone who sets aside their practical reason is best described as someone with their fingers in their ears and who refuses to reflect on the issue at all. Failing to convince such a person is not a problem for Korsgaard's theory, they are simply refusing to reason. Whether this reply is successful, and how it relates to the shmagency problem, will be developed further - but in relation to Cohen's bad action problem, the crucial point is that Korsgaard will not accept Cohen's explanation of the mafioso as someone who is rational but not convinced.

In summary, Cohen's bad action problem is a disagreement with Korsgaard's conception of practical identity and the role of reflection. Korsgaard argues that our deepest identity is fundamentally intertwined with our capacity for reflection and that from this relationship, between reflection and our deepest identity, we can discern that morality itself is a result of the relationship between our deepest identity and the role of practical reason. Cohen critiques Korsgaard's argument by arguing that we can utilise reason without endorsing the particular type of identity she envisions, for example by endorsing an honour code or prioritising particular relationships above whatever practical identity entails. This is a problem for her argument, because Korsgaard's constitutivism requires that agents are using, and endorsing, their practical identity whenever they attempt to test whether their moral beliefs can withstand the scrutiny of reflection. So, Cohen's critique is best understood as a disagreement about what is necessary for the process of reflection on morality. Korsgaard argues reflecting on morality entails the use (and therefore endorsement) of our practical identity while Cohen argues that we can undertake reflection on morality without endorsing practical identity as Korsgaard conceives it. Practical identity is the endorsement of practical reason, the reflective structure of my mind, as the most fundamental element of my identity. Cohen's disagreement is that we can endorse other elements of our identity, such as particular relationships or concepts such as honour, just as deeply (or, more so) as we endorse practical reason.

cases where *we ourselves* are making decisions. Our bodies and parts of our brains might be at work, but the decisions are not *ours*.

2.5 The similarity between the shmagency problem and the bad action problem

Both the bad action problem and the shmagency problem attempt to demonstrate that the constitutivist approach cannot ground objective normativity by arguing that the objectivity of normativity must be grounded in something external to the constitution of the agent. There are underlying assumptions that differ between Enoch's shmagency problem and Cohen's presentation of the bad action problem, but they share the key mechanism that accomplishes the task of undermining the constitutivist approach: in both cases the argument is that the constitution of the agent is not necessary in the manner required for the grounding of objective (necessary) normativity. This shared critique is supported in different ways, with different examples and varying supporting explanations, but can be solved with the same solution because they share this key mechanism.

Enoch presents shmagents as alternatives to agents while Cohen presents his mafioso as an agent with a differently prioritised identity than Korsgaard's theory entails. Because of the role identity plays in Korsgaard's constitutivism these are, broadly speaking and in the relevant sense, the same thing: the point, underlying both the bad action and shmagency problems, requires that there is an alternative to the identity of the agent as Korsgaard explains it. Cohen presents this point as an *agent* who identifies something other than their practical identity as the source of normativity. Enoch presents this same point as an agent questioning their constitution, as such, by providing the hypothetical alternative constitution of a shmagent. A 'bad actor', such as Cohen's mafioso, is a coherently self constituted subject, but it is not a subject that endorses its own constitution in the manner described by Korsgaard. In this sense *it is a shmagent*. My point is that endorsing something other than the constitution as Korsgaard understands it *is* the functional definition of shmagency. By functional definition I mean that the bad actor is doing the same thing as the shmagent, performing the same function in the same manner: it is an example of a subject who *is* coherently constituting themselves but *not* as Korsgaard envisions and the problem this causes is that this alternative coherent self constitution entails a different morality (a different moral law, a different moral code). For this reason one might consider the mafioso an example of a shmagent. I do not mean this in the sense that Cohen himself, or Enoch, would regard the mafioso and the shmagent as the same thing. If Enoch thought this I assume he would have made it explicit in his first paper on the shmagency problem. What I mean is that they are the same problem but differently represented.

The shmagent and the mafioso are the same thing, differently represented, because they both serve to expose the same (supposed) problem with constitutivism: the necessity of the source of normativity is incompatible with the contingency of the source of normativity.⁴⁴ Cohen's bad action problem demonstrates that Korsgaard's source of normativity is contingent because an agent might elect to endorse a different element of their identity as the foundations for normativity while the shmagent, Enoch's shmagency problem, demonstrates that her source of

⁴⁴ At least, they are exposing the *same* problem. I have described it as the key problem because, as I will explain later in this thesis, it relates to existing and long standing problems with the Kantian approach: Kant's epistemology is critiqued for making too much of (attempting to derive too much from) our access to the nature of reason.

normativity is contingent by explaining that an agent may not endorse their own constitution at all. In both cases the problem is that the constitutive element of agency itself is not necessary and the difference is how this is demonstrated.

Cohen's mafioso is a specific example while Enoch's shmagent is a discussion of a hypothetical possibility, but both are making the point that *multiple* imperatives follow from the constitution of a subject. At the end of § 2.4 I explained that Cohen's bad action problem is actually a disagreement with Korsgaard about the particulars of how normativity can be derived from our deepest identity. Cohen's problem is only possible if Korsgaard is wrong that we ultimately derive all normative judgements (principled acts of law making) from practical identity as such. Enoch's shmagency problem relies upon the same disagreement: the shmagency problem only works because it conflicts with Korsgaard's point that the dictates of practical identity are self-authenticating. By 'self-authenticating' I refer to Korsgaard's argument that the normativity grounded in practical identity is justified because of the necessity of that foundation, and that this grounding does not entail a reference to any external entity or justification. The point of contention is that Korsgaard derives normativity from our constitution while putting forward a particular conception of what that constitution is; in particular, Korsgaard posits that our faculty of reason, in its role as the arbitrator between differing reasons for action, is our deepest identity and that the necessity of this identity entails both the moral law and the objectivity⁴⁵ of the moral law. The disagreement, from both Enoch and Cohen, is with the necessity of this role for our practical identity. They pose their respective problems, with the mafioso example and the shmagency problem question ('why be an agent?'), by demonstrating that the moral law as it follows from our constitution cannot be necessary (or, at least, if it is necessary it must be because of some consideration independent from our constitutions).

This common point at work in both critiques can be made more explicit with an examination and comparison of the key points of Enoch and Cohen's criticisms. Enoch (2006) argues that even if our constitution entails a particular moral law and we are able to discern what that particular moral law is, it does not follow from these two points that we *should* endorse this moral law (pp. 185-186). The distinction, which is the heart of the shmagency problem, is that something following from our constitution does not entail that we should endorse it. With this distinction Enoch, if he is correct, establishes that Korsgaard has failed to ground normativity in how we are constituted, *even if* she is correct in her claim about the moral law following from our own constitution. This can be summarized as follows:

Enoch: the Moral Law follows from Practical Identity, but this does not establish that we ought to endorse Moral Law

⁴⁵ 'Absolute necessity' and 'objectivity' are in this context the same thing. However, pointing out that it is the nature of our constitution that entails this objectivity is a substantial claim: it is not clear that absolute necessity, objectivity, and the nature of our faculty of reason are related in the manner Korsgaard posits. For an expansion of what I mean by 'absolute necessity' see the section on Velleman and Enoch where I put forward an alternative, Kantian, reply to the shmagency problem. The nature of objectivity, as such, and how it relates to necessity is discussed directly in the objectivity and realism section: at this point my intent is, merely, to identify the relationship between the necessity of practical identity and the objectivity of Korsgaard's foundations (rather than to elaborate on that relationship).

So, the point of the shmagency problem (at least, as it applies to Korsgaard's theory) is that it does not matter what normativity follows from practical identity (how we are constituted) unless we have a reason to endorse what follows from practical identity. Notice the parallel to Cohen's criticism: Cohen's critique is that one might endorse what follows from some other element of your identity rather than what follows from practical identity. This point can be summarised in the same way as Enoch's critique because in both cases we need some *further* reason to endorse what follows from practical identity:

Cohen: the Moral Law follows from Practical Identity, but this does not establish that we ought to endorse Moral Law

The summaries of both positions are the same because in both cases the point is that practical identity only entails that we ought to endorse the moral law if it is the case that we ought to endorse what follows from practical identity.

The particulars of how this common point is demonstrated differs between Enoch and Cohen, but the differences do not cause the two to become different problems. Cohen demonstrates this point by explaining that one might endorse another element of our identity while Enoch demonstrates the point by explaining that one might endorse shmagency instead of agency. In either case what is being demonstrated is that:

PI entailing ML only means we ought to endorse ML *if* it is the case that we ought to endorse PI.

This difference in presentation, of the same underlying problem, makes the connection to Korsgaard's solution to the problem clearer for Cohen's presentation than it is for Enoch's. Because Cohen demonstrates the problem by referring to an agent's self constitution (an agent interacting with their own identities) it is, comparably, straightforward for Korsgaard to reply to the problem by explaining that the agent (the mafioso, in this case) is merely performing the activity of self constitution poorly. This is the same solution I will present, on Korsgaard's behalf, to the shmagency problem; but it is not as straightforward to apply this solution to the shmagency problem because it is not clear how, in Enoch's demonstrating of the problem, the agent in question is undertaking the activity of self constitution at all. The point is that the difference of these two presentations of the problem, Enoch and Cohen's, makes providing a reply to the problem more difficult in Enoch's case than Cohen's, but these differences do not alter either the nature of the problem underlying the critique or what the solution to that problem is.

There is another presentation of this same problem that demonstrates the issue. In § 2.4 I explained a similar problem put forward by Smith (2015) who argues that multiple reasons for action follow from what is inescapable because we have multiple inescapable functions (such as, according to Smith, vehicles for our genes and self constitution) (pp. 193-194). This is the same critique put forward by Cohen: the problem is that we might endorse one of the *other* things, not the moral law, that follows from elements of our constitution. The distinction between Smith's and Cohen's problems is that Smith (2015) also provides the solution when he explains that the necessary relationship between reasons for action and our identity as agents precludes the comparison that causes the problem (p. 193). His solution is that there is a necessary

connection between being an agent and the reasons for action that one ought to endorse. This is similar to Korsgaard's solution to the bad action problem: Korsgaard's solution, covered in the next subsection, is that our deepest identity is necessary and it entails the moral law.

In summary, the common point underlying both Cohen and Enoch's critiques is a disagreement with Korsgaard over the nature of our constitution and its ability to function as a self authenticating foundation for normativity. They argue that our constitution cannot be self authenticating because we require some reason to endorse practical identity: even if the moral law follows from how we are constituted, we still require a reason to endorse our constitution. There is a sense in which this is a broad disagreement, in Enoch's case the disagreement between robust realism and constructivist realism underlies his critique. However, the particular point of disagreement is more focused than this suggests - Korsgaard's claims about our deepest identity is both the point of contention and the defence she puts forward. In Cohen's case the point is that we might endorse some competing element of our identity as the 'deepest' and in doing so endorse a normativity other than the moral law as envisioned by Korsgaard. Because, in both cases, the problem is that we require a reason beyond what our practical identity itself provides to endorse what practical identity entails the solution to the underlying problem will be a solution to both of the problems: if Korsgaard's answer to Cohen justifies why practical identity is self-authenticating (why it does not require further grounding) then her answer will solve the shmagency problem too.

2.6 Korsgaard's reply to the bad action problem

Korsgaard's reply to the bad action problem is that our constitution is self-authenticating. This shows that there cannot be a regression that leads an agent asking why they ought to endorse their practical identity. Our constitution, according to Korsgaard's constitutivism, is self-authenticating in the sense that the normativity grounded in it does not require further justification: our constitution *is* the foundation for her constitutivism. This solves Cohen's presentation of the bad action problem because, if Korsgaard is right, it explains that one ought to endorse what follows from one's practical identity rather than some other element of their identity because practical identity is the appropriate grounding for normativity in a manner that other elements of our identity are not. In this subsection I explain Korsgaard's reply to the bad action problem: her reply is that the bad actor presented by Cohen is wrong about the ability of elements of our identity, other than practical identity, to serve as competing foundations for normativity. The purpose of developing an examination of this reply is to explain the key point required to extend this reply to the shmagency problem, which is the topic of the next subsection. Korsgaard's reply to the bad action problem can be extended to the shmagency problem because her contention that the agent is making an error by seeking any grounding beyond practical identity also explains why the shmagency problem question ('why be an agent?') is misguided in a manner that solves the problem posed by Enoch; however, explaining the particulars of why this reply can serve to solve the shmagency problem in this manner requires an explanation of the problem itself.

Korsgaard begins her reply to Cohen by explaining why one *must* conceive of one's will as enacting universal laws rather than particular edicts.⁴⁶ She begins her reply in this manner because Cohen presents the possibility of endorsing particular edicts, rather than laws, as an alternative to her explanation of the process of self constitution. This is an important disagreement, and an appropriate place for Korsgaard to have begun her reply, because the reason that Korsgaard thinks we *must* will in universal laws is the same reason that she thinks that we must endorse what follows from practical identity rather than an alternative element of our identity. Korsgaard (1996b) argues that we must will in universal laws because:

I cannot regard myself as an active self, as *willing* an end, unless *what I will* is to pursue my end in spite of temptation. In the same way, I cannot regard myself as an active self, as willing a maxim, unless *what I will* is to follow my maxim in spite of temptation. Laws which cannot be violated cannot be followed either, so if I am to give myself a law it must be conceivable that I should break it. If I give myself a law, if I am not merely the place where an impulse is operating, then what I do essentially involves a reference to other occasions when I might do otherwise . . . to *this* occasion, regarded as possibly other, and so regarded in general terms. . . . Again, the form of the act of the will is general. The claim to generality, to universality, is essential to an act's being an act of the will. (pp. 231-232)

⁴⁶ Korsgaard is in fact replying to both Cohen's bad action problem and other critiques simultaneously. Focusing on the elements of her reply as they relate to Cohen facilitates both a more succinct examination and allows the reader to more easily appreciate the relationship between her reply to Cohen and the reply to Enoch's problem that I am deriving from it.

The nature of the will and the nature of the self, Korsgaard argues, are one and the same: the self *is* the will in a particular sense that entails a law giving nature. This position allows Korsgaard to reply to Cohen's critique by arguing that you cannot endorse some competing element of your own identity, other than practical identity, as the foundation for normativity because doing so would be to misunderstand yourself. How this answer works requires further examination of Korsgaard's theory on the nature of the self, but before I undertake a development of that point I need to explain how the misunderstanding of oneself and the misunderstanding of the foundations of normativity are one and the same thing (in Korsgaard's theory).

The relationship between misunderstanding the categorical imperative and misunderstanding your own identity reveals the crux of both Korsgaard's reply to Cohen and her theory. The point is that the grounding of Korsgaard's Kantian constitutivism is simultaneously the nature of the self and the categorical imperative: to misunderstand the role one plays in grounding normativity is to misunderstand the other. The categorical imperative grounds normativity because it denotes what laws are universalizable, and the nature of the self grounds normativity because it determines that issuing and obeying universalizable laws is the activity of the self. So, if Korsgaard's theory and her reply to Cohen are correct, then misunderstanding the categorical imperative, misunderstanding the foundations of normativity, and misunderstanding the nature of the self are all one and the same thing. To establish this, and so to reply to Cohen's critique, she needs to establish that the nature of oneself entails the categorical imperative, which is why her answer to the bad action problem begins by explaining that the self deals in universalizable laws.

Korsgaard's argument, her answer to Cohen and a point crucial to her metanormative theory, is that the claim to the universalizability of one's will is crucial to the very existence of one's will and for that reason is the relevant feature of one's will when determining the foundations of normativity. Korsgaard (1996b) attempts to establish this by arguing that the existence of the self is the claim to universalizability:

[I]t is the claim to universality that *gives* me a will, that makes my will distinguishable from the operation of desires and impulses in me. If I change my mind and my will every time I have a new impulse, then I don't really have an active mind or a will at all - I am just a kind of location where these impulses are at play. And that means that to *make up my mind* even now - to give myself a reason - I must conceive my reason as an instance of some general type. Of course this is not to say that I cannot ever change my mind, but only to say that I must do it for a reason, and not at random. (p. 232)

Korsgaard's point is that the activity of the will, what the self does, is the activity of willing universal laws and the will exists because what it wills is universal. Her idea is that if you do not will, in this universal fashion, your will fails to be a will or a self at all, at least it fails to be such in any unified sense. A subject that failed to will universally would instead be a hodgepodge mix of impulses rather than a self. She continues to explain that:

Geuss [another critic in Korsgaard's book] reports in his comments that Hegel characterized the Schlegelian life, in which laws are broken frivolously or for its own

sake, as a 'constant succession of self-creation and self-destruction' [p193]. This characterization seems to me to be perfectly apt. The active will is brought into existence by every moment of reflection, but without the claim to universality, it is no sooner born than dead. And that means that it does not really exist at all. (p. 232)

So, according to Korsgaard, the existence of the will, the activity of being yourself, depends on the universalizability of what is being willed.

If Korsgaard is correct, this entails that Cohen's mafioso example is not an example of someone who has failed to deal in universalizable laws (because this is what we all must do), but merely an example of someone who has failed to come to the correct conclusion when undertaking this endeavour. This point is important to her solution to Cohen's problem because if one accepts that point, all Korsgaard needs to do is establish that the mafioso is incorrect that the mafia code can be universalizable in the same manner as the categorical imperative. In this manner, the problem with the mafioso's mafia code becomes simply that *it is not the categorical imperative*, because, of course, if it could be universalizable in the same sense as the categorical imperative then it *would be the categorical imperative*. Cohen's critique is supposed to entail that multiple potential moralities follow from how we are constituted; however, if Korsgaard is right that the nature of the self entails we deal in universalizable laws, then claiming multiple potential moralities follow from how we are constituted entails claiming that there are multiple universalizable laws. So, to restate what I explained earlier, Korsgaard's reply to Cohen becomes to argue that Cohen's mafioso has misunderstood the categorical imperative, which, remember, is interchangeable with misunderstanding oneself.

Korsgaard's solution relies upon the claim that there are not multiple competing normativities one could endorse. This claim follows from her position because there cannot be multiple categorical imperatives that are in competition with one another or else they would not be universalizable (Korsgaard, 2009, pp.175-176). So, because there is only one categorical imperative, the bad actor has failed to constitute themselves coherently when adopting the mafioso honour code (or whatever morality that is in competition with the moral law that follows from the categorical imperative). This means that either Korsgaard is wrong that the will, the self, exists because it deals in universal laws or bad actors, such as Cohen describes, are examples of subjects who are in error and not examples of subjects who endorse independently stable normativities that are legitimate alternatives to the moral law. This is why Korsgaard replies to the bad action problem by attempting to establish that Cohen, and his mafioso exemplar, is mistaken about the nature of the self.

Korsgaard (1996b) attempts to establish that the self, necessarily, requires dealing in universal laws because it is this that allows us to synthesise ourselves as a unified identity:

I must be able to see *myself* as something that is distinct from any of my particular, first-order, impulses and motives, as the reflective standpoint in any case requires. Minimally, then, I am not the mere location of a causally effective desire but rather am the *agent* who acts *on* the desire. It is because of this that if I endorse acting a certain

way now, I must at the same time endorse acting the same way on every relevantly similar occasion. (p. 288)⁴⁷

Korsgaard's point, in this excerpt, is that in order to deal in a self at all we must be dealing in something like a unified entity: something that is yourself. The subject, the unified self, exists, according to Korsgaard (1996b), because of the nature of reflection, because there is such a thing as 'our mind' which can make a proposition and take an action:

For if *all* of my decisions were particular and anomalous, there would be no identifiable difference between *my acting* and *an assortment of first order impulses being casually effective in or through my body*. And then there would *be* no self - no mind - no me - who is the one who does the act. . . . So I need to will universally in order to see my action as something which *I do*. (pp. 228-9)

Her argument, as she explains, is analogous to cause and effect because:

Just as the special relation between cause and effect, the necessitation that makes their relation different from mere temporal sequence, cannot be established in the absence of law or regularity, so the special relation between agent and action, the necessitation that makes that relation different from an event's merely taking place in the agent's body, cannot be established in the absence of at least a claim to law or universality. (Korsgaard, 1996b, p. 228).

The self, according to Korsgaard, requires universalizability, regularity, in order for the subject to understand oneself as a subject (as a self at all) : "so I need to will universally in order to see my action as something which *I do*" (p. 299).

Korsgaard's analysis of the nature of the self, might appear, on the face of it, a poor reply to Cohen because it relies upon the same points he criticises. Cohen's critique is that we *do* appear, in at least some cases, to understand ourselves as subjects *without* willing universally in the manner Korsgaard describes. The reason Korsgaard views her reply is satisfactory is that the nature of self reflection requires viewing oneself from a reflective distance and doing this means viewing oneself in terms of what one would do in various situations (1996b, p. 229-230). The generality, universalizability, of what we will is found, argues Korsgaard, in the nature of *how we will*: because we will with self reflection and that entails determining, at a reflective distance, what one would do, the nature of the will is an activity of universalizing itself.

Korsgaard (1989) argues in "Personal Identity and the Unity of Agency: A Kantian Response to Parfit" that the conception of agency, the will as a unified entity, is required ("fundamental") for the activity of practical reason (pp. 9-10, 26, 29-30). The proof Korsgaard (1996b) provides to support this claim, in support of the foundations of her normative theory, is the structure of our own faculty of reason (pp. 92-93, 100-101).⁴⁸ Given that this observation of the structure of our own minds is the grounding for her position the only reply she can offer Cohen is to refer, once

⁴⁷ Korsgaard (2009) also makes this point in *Defective Action* on p 164 and 173.

⁴⁸ Proof is, in a sense, a peculiar term to use here. This proof, as I explained earlier, is a transcendental apperception which means that it is an observation of the necessary nature of the self and is a 'proof' in the sense that a subject can, if Korsgaard is right, undertake the same examination of the self Korsgaard undertook.

again, to the nature of our rational faculties, self reflection, and explain the implications this has for the nature of the self. If Cohen is correct that we, as fully fledged subjects in whatever sense we are required to be, can understand ourselves without dealing in universalities then Korsgaard's normativity cannot successfully be grounded in the necessity of the reflective structure of agency. So, given the significance of the problem posed by Cohen's assertion, Korsgaard's response is to reiterate the basis of her theory by explaining the nature of agency and the activity of reflection.

This reply to Cohen's critique about the nature of the self also covers the other two elements of Cohen's critique: as well as arguing that we can understand ourselves without dealing in generalities, Cohen also points out that Korsgaard's process of self constitution can be followed but lead to different results (the mafioso and its mafia code of honour) and that the necessity of Korsgaard's claims needs to be established by something external to human reason. Korsgaard's reply to these two further points is that the process of self constitution cannot lead to other multiple laws because of the necessity of the elements of the self that lead to the moral law in particular and that this necessity also demonstrates that human reason is, after all, sufficient to ground normativity. The necessary structure of reason solves these problems, according to Korsgaard, for the same reason as it solves Cohen's criticism that we can understand ourselves without willing generalities: the structure of self reflection, our faculty of reason, is not compatible with unifying the subject without universalising and this is necessity enough to ground normativity.

As Korsgaard (1996b) argues the point, Cohen is correct that we find that our identities can have normative force that is not necessary from the practical standpoint, but they are not *moral* obligations because they are not entailed by our necessary identity (practical identity):

What makes actual moral obligation different from other kinds [such as a psychological feeling of obligation] is supposed to be its applicability to everyone and its rational inescapability. It is these features that seem to give rise to special issues about justification. (p. 256)

Korsgaard is arguing that it is the universalising nature of the will that entails the reality of morality: this is why the nature of the self, the reality of the subject as evidenced by the structure of self reflection, solves the problems posed by Cohen. The reply to Cohen's mafioso is that agents discover the categorical imperative in their deepest identity, their practical identity, as evidenced by the necessity of that identity. Korsgaard (1996b) applies this to Cohen's example, the Mafioso, as follows:

If Cohen's Mafioso attempted to answer the question why it matters that he should be strong and in his sense honour-bound even when he was tempted not to, he would find that its mattering depends on the value of his humanity, and if my other arguments go through, he would find that that commits him to the value of humanity in general, and so to giving up his role as a Mafioso. (p. 256)⁴⁹

⁴⁹ Korsgaard (2009) also makes this point in *Defective Action* on p. 162.

The obligation is real because the mafioso has prescribed it, but it is not moral because their constitution requires that they not make this prescription. The difference, the requirement entailed by morality, is the necessity entailed by practical identity. So, while one might have an element of one's identity that entails an obligation to follow the mafioso code the element of one's identity that grounds this obligation is not a *necessary* element.

In summary, Korsgaard's reply to the bad action problem is to flatly disagree with Cohen's assertion that a subject can understand themselves without dealing in universalizable laws in the manner Korsgaard supposes. Korsgaard supports this disagreement by explaining why transcendental apperception, examination of the structure of our faculty of reason, entails that one cannot understand oneself without employing universal laws. With this point in place, she explains that if she is correct, only one categorical imperative follows from the nature of the self. This means that an agent endorsing an alternative morality is making an error: they have misunderstood the categorical imperative because they have misunderstood themselves. This, as I show in the next section, is also a solution to Enoch's shmagency problem, because Korsgaard can also argue that the shmagent has misunderstood both themselves and the categorical imperative when they attempt to ask the shmagency problem question.

2.7 Why the reply to the bad action problem solves the shmagency problem

Korsgaard's reply to Cohen also functions, with only minor alteration and restatement, as a reply to Enoch's bad action problem. If she is correct, her reply solves both problems because asking why we should endorse what follows from our constitution and asking which part of our constitution we should endorse are the same problems in the sense that they both arise from misunderstanding Korsgaard's point that we are obligated to endorse what follows from our constitution *because it follows from our constitution*. At least, if Korsgaard is correct, both problems arise from misunderstanding the role of practical identity and the necessity of endorsing the moral law that follows from the role of practical identity.

Korsgaard's reply to the bad action problem, which I have reconstructed from her reply to Cohen, is that agent's do not ask why they should endorse what follows from the constitution of their agency without making an error. I should stress to the reader that this is not Korsgaard's actual reply to the shmagency problem - she does not offer such a reply. The notion of a subject who decides whether they ought to endorse their agency or some hypothetical alternative, such as shmagency, is merely the notion of a subject who is confused or in error. If Korsgaard's reply to Cohen is correct, endorsing *anything* entails endorsing agency too. So, Enoch's shmagent has in fact *already* endorsed agency when asking about what he should endorse.

This reply might appear, on the face of it, to be the same reply offered by Velleman, explained in § 1.4. Velleman (2009) argues that the shmagency problem question is defective and so the shmagency problem is not an issue for his constitutivism (pp. 142-144). In a broad sense this is the same kind of reply that I am constructing for Korsgaard: If Korsgaard's reply to Cohen is correct, Enoch's shmagency problem fails because the subject who asks the shmagency problem question has misunderstood both themselves and the categorical imperative. Velleman and Korsgaard's reply are the same in the sense that they both argue that the shmagency problem question is flawed. However, they reach the claim that the question is flawed in different ways.

While Velleman argues that the criterion for a correct answer is supplied alongside the question, Korsgaard's point is that the foundation for the categorical imperative is supplied by the nature of the self. In both cases, the problem with Enoch's shmagency problem question is that it assumes the foundations are flawed. Velleman argues that the shmagency problem is flawed because it asks a question that does not have a related frame of reference; he claims that answers to normative questions are relative to the constitution of the subject who is asking the questions. So, if Velleman is correct, then Enoch's shmagency problem question is flawed because it assumes one can ask normative questions without a related frame of reference. Korsgaard's argument is that *morality in particular* is related to the *necessary* frame of reference (practical identity). While both replies argue that there is a problem with the subject even asking 'why be an agent?', the crucial distinction is that Velleman's explanation of why the question is flawed entails relativism, while Korsgaard's does not.

This distinction is derived from Korsgaard's argument that the categorical imperative is universalizable in a manner that other obligations are not, which is the reply she gives to Cohen's claim that the mafioso's code follows from the process of self constitution. This is also the point that allows Korsgaard, if she is correct, to dismiss Cohen's concern that the objectivity of normativity must be derived from something other than human reason. Cohen's criticism relies upon the claim that an agent, the mafioso, might endorse something *other* than the moral law, and this claim is only possible if the moral law is in some sense contingent. Cohen thinks that endorsing our practical identity, and the moral law that follows from it, is contingent and so he proposes the example of someone who endorses something else. He thinks that endorsing our practical identity is contingent because Korsgaard grounds the necessity of the practical identity in human reason (in something that, according to Cohen, might have been otherwise) rather than reason as such (such as Kant's pure reason). As I explain in §§ 1.1-1.5, the contingency of agency is the claim that allows Enoch's shmagency problem to threaten constitutivism: because agency is, at least hypothetically, contingent the subject can ask whether they ought to endorse agency or endorse some alternative, such as shmagency.

In both the bad action and the shmagency problem, if Korsgaard is correct, the subject (bad actor or shmagent) cannot have found an alternative categorical imperative because the categorical imperative is *necessary*. Korsgaard (1996b) argues that the psychological phenomenon of obligations can conflict with one another (pp. 255-256). Her point is that simply experiencing having an obligation *does* suffer the types of problems outlined by Cohen and Enoch: one might simply not endorse the element of one's identity that generates the obligation. So, if morality were *merely* founded in human reason in some sense that entailed a contingent identity, then both Cohen and Enoch would be correct: one might ask why one ought to endorse the element of one's identity that entails morality and, because that element is contingent, Korsgaard's theory would not be able to provide an answer. But Korsgaard is *not* arguing that morality is founded in a contingent identity.

Korsgaard's argument is a transcendental argument, and for that reason Cohen is wrong to assert that Korsgaard cannot utilise Kant's grounding for the objectivity of reason. Cohen argues that because Kant appeals to reason *as such* he utilises a sense of reason that is necessary in a manner Korsgaard's use of human reason is not. However, Korsgaard's (1996b) argument (and her reply to Cohen) is that the applicability of practical identity to everyone undertaking self reflection *does* entail sufficient necessity (pp. 122-123, 256). The point is that, if Korsgaard is right, anyone asking normative questions *must* endorse their own value and that entails the categorical imperative. The reason for this is that to be asking normative questions is to be engaging in the activity of agency: you simply cannot do it without having a practical identity because the activity of asking normative questions *is the activity of practical reason*. Like Velleman's reply this entails that the question is coupled with the criterion for the correct answer to the question, but unlike Velleman, this does not entail that the answer to the question is contingent.

The objectivity and necessity of the categorical imperative are fundamentally linked. The difference between this reply I have constructed from Korsgaard's response to Cohen and other inescapability replies to the shmagency problem is the reason that agency is inescapable. Constitutivists in general appeal to the inescapability of agency (or the inescapability of whatever it is that grounds normativity for the constitutivism in question), but they do so in varying ways because they are trying to establish different types of normativity. In *Foundations for Moral Relativism* Velleman (2015) argues that morality is relative to our frame of reference and that we share one particular frame of reference (human nature) that is inescapable given that we are humans (p. 56).⁵⁰ In making this claim, Velleman only intends to establish a limited sense of inescapable shared normativity, not one that is, for example, sufficient to ground a categorical imperative. The inescapability, the necessity, of the grounding of constitutivist theories is fundamentally linked to the type of objectivity the theory is intended to establish. Korsgaard's constitutivism is intended to establish the categorical imperative, so it deals in necessity that applies to all subjects that engage in practical reason. Velleman's constitutivism is intended to establish reasons that are relative to the frame of reference being deployed, so it deals in necessity that applies to all subjects within that frame of reference.⁵¹

The point underlying Korsgaard's reply to Cohen that allows her reply to extend to Enoch's shmagency problem is that the necessary link between normativity and the possible nature of subjects entails that what is necessary for *any* subject will be necessary for any other subject. The point is about what something being necessary means - we might consider any number of elements of our own identity necessary in a different sense than the type of necessity Korsgaard uses to establish the categorical imperative and which allows her to offer this reply to the shmagency problem. For example, one might claim that being a father, a wife, a teacher, and so on is a necessary element of who they are, but could not be something that is necessary for all agents. This type of necessity is closer to what Velleman has in mind for his constitutivism, the reasons for action (and, so, the obligations) that follow from our frame of reference may be necessary *for us*, which is fine for Velleman because he is attempting to establish norms that are relative. The necessity Korsgaard is grounding normativity in is the necessary structure of the reflective process, and this is necessary in the sense that to be engaging in self reflection, or practical reason, *at all*, it is necessary to have practical identity. So, the necessity that

⁵⁰ I discuss Velleman here because of my focus on Kantian constitutivism. However, this theme of inescapability extends beyond Kantian constitutivists. Paul Katsafanas (2013) puts forward a Nietzschean constitutivism and argues in *Agency and the foundations of ethics: Nietzschean constitutivism* that inescapability is what gives normativity its special status (justifies its obligations on us) (p. 47). David Borman (2015) puts forward a discourse ethics constitutivism and argues in "Going Social with Constitutivism" that the shmagency problem is solved by the inescapability of what is constitutive of the discourse that grounds normativity (p. 222). Connie Rosati (2016) replies to Enoch's shmagency problem with a weakened version of the inescapability reply in "Agents and 'shmagents' an essay on agency and normativity" where she argues that agency is a necessary requirement for normativity (pp. 206, 207-208, with a stronger version tentatively endorsed by Rosati on pp. 208-210).

⁵¹ Although it is worth noting that frames of reference as such are, for Velleman, still inescapable for all subjects dealing in normativity.

Korsgaard deals in when establishing the grounding of her normative theory is necessity common to all subjects that engage in self reflection.

My purpose in explaining the difference between the type of necessity and inescapability deployed by Velleman and Enoch was to explain why the necessity of the grounding for normativity fundamentally relates to the type of objectivity that is being established. Referring to objectivity in this manner, the type of objectivity, may appear peculiar, but it reveals the implications of the position in question. Velleman (2009) argues that reasons are objective in the sense that agents in similar situations would provide the same answers to the same normative questions (pp. 119, 146). Korsgaard's reply, according to her normative theory and her reply to Cohen, is that morality is objective in the sense that engaging in practical reason necessarily entails the moral law.

Notice that there is a sense in which Korsgaard's reply fails to solve the shmagency problem, because one might still ask, as Enoch (2006) does, why we ought to endorse what follows from what is required by our necessary constitution (pp. 187-192). However, this element of the shmagency problem question, as I argue in the section covering Enoch and Velleman's debate, is an inappropriate extension of the problem given the epistemic underpinnings of the constitutivist theory in question. By placing the grounding for normativity in the necessary element of reflection. Korsgaard is not merely explaining where normativity comes from but also taking a stance on where it cannot come from; Korsgaard (1996b) takes this position where she argues that robustly realist approaches to grounding normativity have failed (pp. 44-48).⁵² This is why Korsgaard's reply, like Velleman's, entails that there is a problem with the shmagency problem question: it involves asking for a justification beyond where one can be found. It is the asking of this further question, why endorse what follows from what is required by our necessary constitution, that makes the shmagency problem question defective in the context of Korsgaard's theory.⁵³

If Korsgaard is correct, 'why be an agent?' asks for an answer that cannot be given, and what determines what questions cannot have answers in this manner is the type of objectivity the answer to the question is eligible for. Hence, Korsgaard's solution to the shmagency problem question is *both* that the objectivity of normativity is found in an element of the subject and that it must be the necessary element of the agent's constitution as regards its exercising of practical

⁵² Korsgaard prefers the term "substantive realist". I prefer "robust realist" because it is the term used by Enoch who supports such a position and utilises it to pose the shmagency problem; adopting the terminology used for the position by the supporter of that position more clearly identifies the disjunction between Korsgaard and Enoch.

⁵³ This is the Kantian solution to an attempt to continue asking the shmagency question after an answer has already been provided. Non-Kantian constitutivists can provide a similar answer. Rosati (2003) argues in "Agency and the Open Question Argument" that our good is determined relative to our agency and so Enoch may not ask the question in a manner that implies normativity beyond the scope of agency (pp. 523-524). Her point is that constitutivism, as such, precludes such inquiries because it explains why the scope of normativity is limited to the scope of agency.

reason (so, its practical identity). Like with Velleman's reply, there is a sense in which this is a victory for Enoch and a sense in which this is a victory for Korsgaard. This is a victory for Enoch in the sense that Korsgaard's constitutivism has indeed failed to justify the objectivity of normativity, *if by objectivity one means a robust (substantive) realist foundation*. However, it is a victory for Korsgaard in the sense that Enoch's shmagency problem requires asking for something that cannot be provided and, by doing so, fails to demonstrate that what is provided is unsatisfactory. Ultimately what is established is the same clarifying of epistemic commitments that is accomplished in the debate between Enoch and Velleman: in this case that Korsgaard's normativity is response dependant (subject dependant), but still objectivist.

In summary, Korsgaard's reply to Cohen's bad action problem serves as a reply to Enoch's shmagency problem because her argument that practical identity, and therefore the categorical imperative, is necessary for all subjects demonstrates why the shmagency problem question ('why be an agent?') is defective. The question is defective, according to what is entailed by Korsgaard's reply to Cohen, because it demands a justification for normativity that cannot be attained because of epistemic limits on the foundations of normativity. Korsgaard argues that by engaging in practical reason, at all, one has already endorsed one's own practical reason (found one's humanity to be valuable) and so the project of justifying that claim, the transcendental argument she puts forward, begins from this position of value. This is a response dependant (subject dependant) approach to grounding the objectivity of normativity and, as such, it entails an epistemic commitment which is incompatible with asking for further justification, some further grounding or foundation, that is robustly realist in the sense that it is external to the subject.

Section 3: Scalar deontology

3.0 Developing a scalar deontology

Kantian constitutivism, the combination of the Kantian strategy with the constitutivist approach, can be utilised to develop a scalar deontology: a deontological moral theory which measures our fulfilment of duty according to the degree we are succeeding at the activity that is constitutive of normativity (which is, according to Kantian constitutivism, coherent or intelligible self constitution). Our obligation to ourselves (I use duty and obligation interchangeably) is scalar from the position of a subject that is making a decision and, by undertaking that process of reflection, exercising their freedom. So, scalar deontology is derived from the position of the subject that is engaged in the activity of self constitution. The idea is that our obligation to constitute ourselves coherently or intelligibly is our aim if we are to become the type of person we ought to be. This aim is something we pursue more or less successfully depending on the decisions we make as part of the ongoing process of self constitution. From the standpoint of the subject that is constituting themselves one's obligation to oneself is not a matter of success or failure, coherent constitution or not; it is an ongoing project that allows for varying levels of success. It is in this context that our attempts to adhere to the categorical imperative, to do the right thing, are more or less successful rather than strictly successful or not. The decisions we make, when deciding what to do (attempting to adhere to the categorical imperative), are more or less successful at furthering our aim of coherent self constitution.

Kantian constitutivism allows for the development of a scalar deontology. The constitutivist source of normativity facilitates a morality founded in the categorical imperative, but with the ability to use that imperative to measure relevant moral considerations as more or less good (or bad) rather than strictly good or not. While any individual moral problem might only have one correct solution the problem itself is a subset of an ongoing activity. It is this ongoing activity which allows us to measure one incorrect solution as more or less incorrect than another. A scalar constitutivism is a theory that explains why our attempts to solve moral problems can be understood as more or less helpful towards our goal of self constitution while, at the same time, understood as correct or false when considered in their own right. This explains why a subject can simultaneously fail to adhere to their obligation while being successful in constituting themselves more coherently. A scalar theory of constitutivist normativity is a theory that explains why self constitution is something that one is more or less successful at pursuing rather than something one has achieved or failed to achieve (see §§ 3.5 and 3.6).

Kantian constitutivism entails scalar deontology because it combines the Kantian strategy and the constitutivist approach to derive normativity from elements of the constitution of the self. The Kantian strategy is deriving what must be the case given what we know about necessary elements of our own faculties and the constitutivist approach is deriving normativity from elements of the self. I explain the Kantian strategy further in § 3.1 and the constitutivist strategy in § 3.2. Kantian constitutivism utilises both of these to derive normativity from necessary elements of ourselves. The necessary element of the self that normativity is derived from is our autonomy, by which I mean the ability of a subject to control their own choices when making a decision by utilising rational reflection. This process of controlling one's own actions with one's faculty of reason is often described as freedom or practical reason. I explain the role of freedom

in the foundations of Kantian constitutivism in §§ 3.7 and 3.8. Deriving normativity from our control over our own decisions requires understanding normativity in the same context that this control exists and that context is the position of a subject that is engaged in exercising that control (making a decision). I explain the sense in which our control, our freedom, exists only in the context of the position of a subject exercising it in § 3.6. Kantians argue that freedom exists in the context of a position of a subject that is exercising it because it describes the way they interact with the world. Because normativity is derived from an element of our constitution that can only be understood in a particular context the normativity itself needs to be understood in the same context, or, at least, it needs to be capable of being understood in that context: see § 3.6 where I develop this point further. It is this point that allows for the development of scalar deontology.

The sense in which our obligation to ourselves (our duty), to constitute ourselves coherently or intelligibly, is scalar can only be understood in the context of a subject that is pursuing self constitution. It can only be understood in this context because it is this context in which our obligation to ourselves is an ongoing pursuit which we can pursue more or less successfully. When this obligation is described in different contexts, such as Kant describes when formulating the categorical imperative as universal law (see § 3.9 for further development), it does not appear to be scalar because removing the context of the subject, and their ongoing pursuit of the constitution of their self identity, removes what makes our obligation scalar. To support this argument I first need to explain the Kantian strategy (§ 3.1) and the constitutivist approach (§ 3.2), which allows me to then explain how they combine to become Kantian constitutivism (§ 3.3). With the combination of the Kantian strategy and the constitutivist approach explained I am then able to justify why it entails scalar deontology through its derivation of normativity from the constitution of the autonomy of the subject (§ 3.4) and then present the argument for scalar deontology (§ 3.5). Following this there are several points that must be addressed to support my argument for scalar deontology. This argument is grounded in a particular conception of freedom which entails that our control over our own actions, rather than any non-deterministic attribute of the will, is the source of normativity (§ 3.6). Because of the dependence of scalar deontology, and Kantian constitutivism, on the autonomy of agents the compatibility between the foundations of Korsgaard's Kantian constitutivism (§ 3.7) and Velleman's Kinda Kantian constitutivism (§ 3.8) need to be established. Finally, I need to explain the relationship between scalar deontology and other formulations of the categorical imperative (§ 3.9) in order to justify my argument that this is a development of Kantian moral theory rather than something with different foundations.

3.1 The Kantian strategy

The Kantian strategy is the transcendental approach to philosophy which is put forward by Immanuel Kant (1781/1787/1996) in the *Critique of pure reason* where he proposes a system of transcendental philosophy which explains the nature of cognition by examining what is necessary for the cognition of objects to be possible at all (A11-16, B24-30).⁵⁴ In “Reading Kant’s Groundwork” David Velleman (2012) explains the Kantian strategy as follows:

The overall strategy of Kant’s moral theory is to derive the content of moral obligations from the very concept of an obligation. Kant thinks that we can figure out what morality requires by analyzing the very idea of being morally required to do something. (p. 343)

Velleman (2009) applies this strategy to his constitutivism in *How We Get Along* where he argues that “[r]easons are therefore objective and their status as reasons can be established once and for all, by the philosophical analysis of agency” (pp. 146-147).

Christine Korsgaard (1996b) describes the Kantian strategy in a similar manner, in *The Sources of Normativity*, where she describes the Kantian approach as an appeal to autonomy and explains that:

Kantians believe that the source of the normativity of moral claims must be found in the agent’s own will, in particular in the fact that the laws of morality are the laws of the agent’s own will and that its claims are ones she is prepared to make on herself. The capacity for self-conscious reflection about our own actions confers on us a kind of authority over ourselves, and it is this authority which gives normativity to moral claims. (pp. 19-20)

The similarity between Korsgaard’s explanation of the Kantian approach and Velleman’s is that both of them identify the role of the subject as crucial to the derivation of morality. Velleman identifies this as the concept of obligations and Korsgaard in the claims an agent is willing to make on themselves: both obligations and claims that we make on ourselves require a relationship with the subject in order to provide the foundations for morality. Korsgaard develops her own application of this strategy so that she can apply it to the development of her constitutivism. Korsgaard (1996b) summarises her development of the Kantian strategy as the derivation of laws from the nature of reflection:

[T]he reflective structure of human consciousness gives us authority over ourselves. Reflection gives us a kind of distance from our own impulses which both force us, and enables us, to make laws for ourselves, and it makes those laws normative. (pp. 128-129)

This development of the Kantian strategy allows Korsgaard to demonstrate why the constitutivist approach follows from the Kantian strategy. Deriving the nature of normativity from the constitutive activity of the self is an appeal to the nature of practical reason (that is, the nature of using one’s faculty of reflection to make a decision). Korsgaard makes this appeal because of the relationship between personal identity and practical reason. This relationship, argues Korsgaard, is that the faculty of reflection is what makes us the type of thing that we are.

⁵⁴ I explain this further in the context of Korsgaard’s constitutivism in §§2.1 and 2.7.

The idea, the Kantian strategy, is that the truth of the claims, regarding morality and the existence of normativity, is derived from its foundations in our own nature: the Kantian strategy is to derive morality from necessary elements of practical reason. The necessity of these elements is what makes the answer derived from this strategy objective and the nature of these elements, practical reason, is what enables the strategy to answer moral questions. This Kantian strategy informs the nature of the foundations of the constitutivist approach. The nature of being morally obligated to do something, as Velleman (2012) describes duty, is found in the nature of practical reason (p. 434) and this meets the constitutive approach where the nature of practical reason is located: in what constitutes the activity of practical reason, action and agency.

3.2 The constitutivist approach

The constitutivist approach is the method of deriving moral content from what is constitutive of our nature. Constitutivism is the metaethical project of justifying moral claims by referring to the constitutive elements of whatever is in question. So, according to the constitutivist approach, given my nature as an agent, what I ought to do can be determined by examining what constitutes my nature; or, to present the same idea differently expressed, how I should act can be determined by examining the nature of action. It follows that moral assertions, claims about the actions of myself or others, are justified by appealing to what constitutes the relevant nature. For example, I justify my claim that murder is wrong by appealing to some element of how the murderer is constituted.

David Enoch, in *Agency, shmagency: why normativity won't come from what is constitutive of action* (2006), explains the constitutivist approach as an appeal to the constitutive function of whatever is in question:

“The intuitive idea can be put, I think, rather simply: In order to know what it takes for a car to be a good car, we need to understand what cars are, what their constitutive functions are, and so on. A good car is just a car that is good *as a car*, good, that is, in measuring up to the standards a commitment to which is built into the very classification of an object as a car. Analogously, then, perhaps in order to know which actions are good (or right, or reason supported, or rational, or whatever), all we need is a better understanding of what actions are, or perhaps of what it is to be an agent, someone who performs actions. Perhaps the normative standards relevant for actions will fall out of an understanding of what is constitutive of action just as the normative standards relevant for cars fall out of an understanding of what is constitutive of cars.” (p. 170)

This method of justifying normativity is normative because it tells us what to do, or shows us where to derive the relevant moral content from. It is metanormative because it explains where normativity comes from and the nature of normative claims. The constitutivist approach solves normative and meta normative problems by explaining where we derive normative content and why normative content exists (where it comes from and how to attain it).

The constitutivist approach to normative theories is a broad project that extends beyond philosophers employing the Kantian strategy. For example, Paul Katsafanas (2013) develops a constitutivist approach from the nature of the will to power in *Agency and the Foundations of Ethics: Nietzschean Constitutivism* where he argues that the subjective aim of the will (the will to power) allows the constitutivist approach to provide content based on the particulars of the will (pp. 145-6, 156-163, 168-171). Sharon Street argues in “Constructivism About Reasons” that the Kantian use of the constitutivist approach cannot succeed in deriving moral content from the structure of practical reason, but that a Humean approach which derived contingent norms from one's attitudes towards one's reasons for action could succeed (2008, pp. 243-244). Non Kantian constitutivist theories differ from those employing the Kantian strategy in the role and

nature of the foundations underlying their constitutivism; which is to say, they employ different notions of what it is to answer the normative question⁵⁵.

Cristoph Hanish (2016), in “Constitutivism and Inescapability: A Diagnosis”, summarises the various constitutivist approaches as sharing a constitutivist maneuver in which an inescapable element of what it is to be human is used to establish “unconditional normative force and authority” (p. 1147). Hanish argues that constitutivism’s defenders view the inescapability of the constitutive element utilised for the constitutivist approach as a guarantor of the authority of the normativity established by constitutivism, while critics of constitutivism argue that this same inescapability is the problem with constitutivism because normativity requires that the contents of normativity are optional (pp. 1148-1150). This is a misunderstanding of what constitutivism is, because the constitutivist approach, considered in isolation, does not require dealing in inescapable elements of one’s constitution or in objective (unconditional and authoritative) normativity. While constitutivists, in their pursuit of their own particular application of the constitutivist approach, do tend to deal in inescapable elements of our constitution and utilise those to establish a form of objectivity, this is not a feature of the constitutivist approach itself; rather, it is something that supplements it. Notice that this allows room for a constitutivist approach that disregards the inescapability requirement (although this would be beyond the scope of Kantian constitutivism). The sense in which constitutive elements of our agency are inescapable for Velleman’s Kantian relativism, Korsgaard’s necessary identity, Katsafanas’ will to power, and Street’s attitudes towards one’s own reasons for action is different for each of these constitutivists. Furthermore, it is not clear that any of these philosophers are even referring to the same thing when discussing those constitutive elements of our nature that they use to ground normativity and what it means for such an element to be inescapable is different for each of these philosophers. The constitutivist approach requires that the source of normativity is a constitutive element of whatever is in question, but it does not require that one make *particular* commitments to the inescapability of that element, nor does it require that one make *particular* commitments regarding what such inescapability would entail. These commitments, regarding inescapability, are introduced from beyond the constitutivist approach, as such, and represent the underlying positions (Velleman’s relativism, Korsgaard’s Kantian roots, Katsafanas’ Nietzschean project, and Street’s Humean approach).

My point is that the constitutivist approach (the constitutivist maneuver), as such, does not *necessarily* require dealing in the absolute and necessary value of moral obligations or in inescapable elements of how we are constituted. I do not intend to imply that constitutivists should not seek, when undertaking the constitutive project, unconditional force and authority for normativity, because there are reasons to do so: it may, for example, simply be the case that problems with relativism lead one to only be satisfied with theories that seek objective answers of some form. Nevertheless, it is not the case that a constitutivist *must* deal in inescapability or purport to justify objective normativity, at least not in order for them to be deploying the

⁵⁵ The normative question, also discussed in section 2 of this thesis, regards the nature of morality: what is morality and in what sense can moral assertions be justified.

constitutivist approach. Rather, all a constitutivist must do, to be a constitutivist, as such, is derive normativity (relative, objective, or otherwise) from some relevant constitutive element. This, minimal, sense of the constitutivist approach is why such a vast array of philosophical endeavours can be considered employing the same metanormative approach.

The compelling case for scalar deontology is founded in the ongoing activity that is constitutive of practical reason. This activity requires an element of necessity, objectivity of some kind or scope, in order to establish that the activity remains the same activity from one instant to another; that is to say, I cannot establish *merely from the constitutivist approach alone* that there is *any* element of an agents constitution that can be considered ongoing through time. This is why I am utilising the Kantian strategy alongside the constitutivist approach to establish scalar deontology. However, if one were satisfied with a scalar deontology founded in an ongoing, but contingent (by this I mean not necessary in the sense that establishes objectivity), activity, then an argument similar to the one I put forward here could⁵⁶ be developed to establish a scalar deontology without committing to particular foundations.

Non Kantian applications of the constitutivist approach, those not combined with the Kantian strategy, are attempting to establish different points than their Kantian counterparts. The reality (or lack thereof) and objectivity of moral 'facts' founded in the nature of the will (to power), or in our attitudes towards reasons for action, is distinct from the reality and objectivity of moral facts founded in the necessary structure of practical reason.⁵⁷ The purpose of the Kantian strategy is to establish the *necessity* of the moral facts while the constitutivist approach, when considered in isolation from the Kantian strategy, is satisfied establishing that the moral facts are grounded in what is constitutive of our nature.

⁵⁶ Given that I have not explicitly done so, 'could' may be too strong a term here. I am confident that such a scalar approach to normativity could be developed in, broadly speaking, the same manner I have done here. I am less confident that it would satisfactorily deliver something based on obligations (duties) in the same manner, however I suspect it could be done. In any case, I have not provided such a development and explain this to the reader merely to identify that I am not intending to argue that utilising the Kantian strategy is the *only* method of developing this theory.

⁵⁷ Reality, necessity, and objectivity are (for the purposes relevant to the point I am making here) interchangeable: so, the reality of normative facts in the context of Kantian constitutivism is the necessity of those facts from the perspective of the relevant type of subject (one with agency). Please see the §0.2 of this point; (alternatively, see Korsgaard (1996b) pp. 107-113 where she develops a similar point or Enoch (2011b) where he argues that response dependant theories of normativity that do not allow for varying rational responses from subjects are, in the sense that their contents are consistent, objectivist in the same manner as platonist theories (p. 30)).

The reality and objectivity of moral facts grounded in the Kantian strategy also differ depending on the extent to which the Kantian underpinnings are accepted, as evidenced in Velleman's relativism discussed during §§ 1.2 and 1.4-1.5 where, in response to the shmagency problem, Velleman endorses a form of moral relativism.

3.3 The constitutivist approach and the Kantian strategy

The constitutivist approach is the attempt to derive normativity from what is constitutive of our nature. What we ought to do, what normativity demands of us in the form of moral obligation, is determined, according to the constitutive approach, by what we are; that is to say, our constitution is the source of normativity. On the face of the claim this is similar to the Kantian strategy, which attempts to derive normativity from the nature of obligations and practical reason, but the difference between the two is found in the role of the subject. One might consider the constitutivist approach and the Kantian strategy as interchangeable, but the distinction between the two is that the Kantian strategy is a broader philosophical project with epistemic and metaphysical positions that inform and underpin the metanormative claims.

The similarities between the constitutivist approach and the Kantian strategy might lead one to wonder if a Kantian theory might utilise *only* the constitutivist approach, without committing to the broader Kantian project, while still providing (at least seemingly) Kantian results. Michael Ridge (2017) explains in “Meeting Constitutivists Halfway” that an attraction of the constitutivist approach is that it can provide Kantian results (justify a Kantian approach to morality) without the associated metaphysical and epistemological commitments (p. 2953-4). The idea is that an autonomy focused normativity that commits agents to the categorical imperative can be established on the basis of agency. Kant (1785/2011) argues in *Groundwork of the Metaphysics of Morals* that goodness comes from the appropriate use of one’s will (4:400), but without positing that any elements of agency are in the noumenal realm (Ridge, 2017, p. 2954). By positing elements of agency in the noumenal realm I mean the metaphysical and epistemological underpinnings of Kant’s moral philosophy: the notion that the nature of the subject’s will can be transcendental, or exist in some sense beyond the existence one might otherwise ascribe to particular experiences, as Kant (1787/1996) argues in *Critique of Pure Reason* when he proposes the transcendental unity of self-consciousness (B132 and B140).

Ridge’s point that the constitutivist approach can deliver something similar to Kantian morality is demonstrated in Velleman’s ‘Kinda Kantian’ constitutivism. As I explained in § 1.5, Velleman’s reply to the shmagency problem depends on his relativist foundations rather than utilising Kantian foundations (as the Kantian reply I put forward, in § 1.6, does). While I argued in § 1 that the Kantian underpinnings of Kantian constitutivism can be utilised to solve the shmagency problem, it also informs some elements of the normative theory it underpins. Ridge posits that Kantian morality can be developed from the constitutivist approach without the fuller extent of the Kantian strategy and insofar as Kantian morality entails grounding morality in autonomy he is correct; however, the nature of the self and its relationship with autonomy is not something that can be directly established by constitutivism. Evidence of this can be seen in Korsgaard’s (1996b) development of practical identity in which she relates the objectivity, and realism, of normativity to necessary elements of one’s own identity (pp. 100-102, 107-108, 118-122, and 150). Because the nature of the self is utilised to inform the particulars of autonomy, for Korsgaard (1996b) the nature of the self, the structure of reflection in particular, allows her to identify which element of our identity is the origin of moral obligations (pp. 100-101), the Kantian strategy is able to provide something that the constitutivist approach does not: an examination,

a critique, of the nature of what constitutes us and so what we utilise when employing the constitutivist approach.⁵⁸

The constitutivist approach facilitates the derivation of normativity from autonomy while the Kantian strategy facilitates the limitation of what can be derived from autonomy. The Kantian strategy is required in order to establish this limitation because the limitation requires a clear conception of the nature of autonomy and that is both a metaphysical and epistemological position: establishing the nature of autonomy requires justifying the nature of knowledge about autonomy and how we access (construct or acquire) that knowledge. This means that constitutivist approaches to normativity must be informed by a position of some kind on these matters of epistemology and metaphysics that pertain to the nature of autonomy and what knowledge can be justifiably derived from it.

⁵⁸ Rather than obligations more broadly understood. You might, for example, have obligations to family members that are not objective in the same manner as an obligation that results from the categorical imperative.

3.4 Scalar deontology: building on Korsgaard and Velleman's constitutivist positions

With the relationship between the constitutivist approach and the Kantian strategy outlined I can now provide the overview of the argument for a scalar deontology and explain its compatibility with Korsgaard and Velleman's constitutivist positions. The idea is that the activity of agency, the ongoing process of making decisions, entails a scalar measure⁵⁹ of our obligation to ourselves (so, of value) because it is an activity that can be performed more or less well. Because undertaking the constitutive activity of agency is something that you do *to a greater or lesser extent* the normativity that follows from that activity entails that particular components of that activity further its aims *to a greater or lesser extent* in proportion to their contribution to that activity. This approach can be adopted by Kantian constitutivism, which does not require particular commitments beyond what is entailed by the Kantian strategy and constitutivist approach; at least, it does not require particular commitments that would preclude it from being adopted by someone who implements these in a similar manner to Christine Korsgaard or David Velleman. At the heart of scalar deontology is the assertion that autonomy has value *to the extent that it contributes to this activity*; the value is grounded in the activity constitutive of agency and that is something that is furthered to a greater or lesser extent (scalar) rather than something that is simply furthered or not. We value our autonomy by constituting ourselves in particular ways (coherently or intelligibly) because constituting ourselves in that manner is the purpose of autonomy and it is the fact that we have autonomy (freedom) that entails we have moral obligations at all. So, our autonomy fulfils the value that we place on it to the extent that it is fulfilling its purpose.

Scalar deontology follows from accepting the broad approach put forward by Korsgaard (1996b) who argues that the source of normativity, the origins of obligation, is what follows from the constitution of autonomy (pp. 103-105) and Velleman (2009) who argues that the criterion for determining correct answers to normative questions is found in what is constitutive of the agents own deliberate attempts to render themselves coherent (intelligible, to use Velleman's own terminology) to themselves (pp. 41-42, 56-58, 92-93, 133-135).⁶⁰ The broad idea is that normativity is grounded in (derived from) the constitution of agency or action (this is the constitutivist approach) and that we can determine elements of the constitution of the nature of agency and action by undertaking a careful examination of their structure (the Kantian strategy). Korsgaard and Velleman derive normativity from an ongoing activity that, by its nature, can be furthered more or less, in a scalar manner, by particular attempts at its undertaking. This entails that the normativity derived from this activity is also scalar to reflect this nature.

The activity of agency is the grounding for scalar deontology in the same manner that it is the grounding for Korsgaard's and Velleman's constitutivist positions. The overview of the argument for scalar deontology is that it follows from grounding normativity in an ongoing activity: because

⁵⁹ One might use the term 'measure of value' rather than 'understanding of value' here, provided doing so does not include any consequentialist implications for the foundations of value; that is to say, the value is scalar *because* it is grounded in an ongoing process.

⁶⁰ It might be more accurate to explain Korsgaard's constitutivism by saying that autonomy is what is constitutive of *us*.

the relevant ongoing activity, the activity of practical reason - constituting oneself, is something that can be done *more* or *less* well, the value grounded in that activity is scalar. Before explaining this further, and clearly outlining the steps involved in the argument for scalar deontology, it is necessary to develop how the claim that agency is an ongoing activity aligns with Korsgaard's and Velleman's positions. To that end I will discuss an excerpt from each that demonstrates the point sufficiently for outlining the argument for scalar deontology and to prepare for the fuller development of this point. By pursuing the claim that agency is an ongoing activity in this manner it is not my intention to claim that scalar deontology requires Korsgaard's or Velleman's theories: rather, by explaining how it follows from both of these applications of the constitutivist approach and the Kantian strategy I intend to demonstrate that scalar deontology follows *in general* from the combined application of the constitutivist approach and the Kantian strategy.

Korsgaard (2009a) argues in *Self-Constitution Agency: Identity, and Integrity* that to be a rational agent is to undertake the activity of controlling one's actions:

As a rational agent, you are aware of the grounds of your beliefs and actions - or, I should say, the potential grounds. For being aware of them gives you some distance from them, and puts you in control. Self-consciousness divides you into two parts, or three, or any number of parts you like: the main thing is that it separates your perceptions from their automatic normative force. The object may still look threatening, like a *thing to-be-fled*, but you must make a choice about whether you should run. On the one side, there is the threateningness of the object, and we call your perception of that threateningness a desire to run. And on the other side, there is the part of you that will make the decision whether to run, and we call that reason. Now you are divided into parts, and must pull yourself together by making a choice. And in order to make that choice, reason needs a principle - not one imposed on it from outside, for it has no reason to accept such a principle, but one that is its own. (pp. 212-213)

As Korsgaard explains this process it seems, on the face of the matter, that one is either an agent or one is not and, for that reason, that there is no scope to derive a scalar understanding of value. The problem, the seeming disjunction between scalar deontology and Korsgaard's constitutivism, is that either the agent is faced with the choice, the problem of deploying reason, described by Korsgaard or they are not, but the argument I am providing for scalar deontology requires that this choice, the problem constitutive of the activity of agency, is an ongoing activity that can be performed more or less well.

This apparent problem is exacerbated by Korsgaard's (2009a) understanding of what it is to unify oneself as an agent, which she explains as:

An agent is the autonomous and efficacious cause of her own moments. In order to be an agent, you have to be autonomous, because the movements you make have to be your own, they have to be under your own control. And in order to be an agent, you have to be efficacious, because your movements are the way in which you make things happen in the world. So the constitutive standards of action are autonomy and efficacy,

and the constitutive principles of action are the categorical and hypothetical imperatives.
(p. 213)

Because the constitutive standards of action is the categorical and hypothetical imperatives⁶¹ there does not appear to be scope for my assertion that this constitution entails a scalar measure of value: the, apparent, problem is that, according to Korsgaard, one's action is either under the control of a principled application of the categorical imperative or it is not.

The scope for a scalar measure of value is found in the nature of the self, which is also why scalar deontology requires both the Kantian strategy and the constitutivist approach, that Korsgaard (2009a) describes as:

[I]n order to be autonomous, it is essential that your movements be caused by you, by you operating as unit [sic] not by some force that is working in you or on you. So in order to be an agent you need to be unified - you need to put your whole self, so to speak, behind your movements. That's what deliberation is: an attempt to reunite yourself behind some set of movements that will count as your own. And in order to reunite, you have to have a constitution, and your movements have to issue from your constitutional rule over yourself ... in order to have a unified will, you must will in accordance with a universal law. Otherwise, you are just a mere heap of impulses, and not an agent after all. (p. 213)

There are two points here that are in contention or, at least, that might be brought into contention with a particular conception of the self. The contention is between the notion that deliberation is an attempt by the self to unite and the claim that you cease to be an agent if you do not will in accordance with a universal law.

In the first of the three excerpts from Korsgaard she explains the problem facing agents ("As a rational agent, you are aware of the grounds of your beliefs and actions - or, I should say, the potential grounds. For being aware of them gives you some distance from them, and puts you in control" (2009a, p. 212)) and in the third excerpt she argues that if you fail to unify your will, by controlling your actions with an appropriate principle, you have failed to be an agent. Notice that there are two *different* conditions for being an agent being utilised by Korsgaard in order to make both of these claims: the first is that what makes one an agent is *being faced by* the potential grounds in which you have control and the second is that you successfully utilise that control to unify yourself as an agent. Both of these conditions are crucial for Korsgaard's explanation of the constitutive elements of agency: one must both face the problem of deliberation and solve it in order to be an agent. They are both necessary, for Korsgaard, because in order to become unified one needs both to have faced the problem that prompts the process of unification and have then completed that process.

This unification is crucial because, for Korsgaard and Kant, it is related to the control one has over one's actions. It is because we are unified in this manner that we are free. The unification

⁶¹ It is worth noting that Korsgaard (2009a) argues, earlier in the same work, that the categorical and hypothetical imperatives are, in a crucial and relevant sense, the same thing (p. 81).

of the will is the good will and the good will is the free will (Korsgaard, 2009a, p.214; Kant, 1785, 4:440-441 and 4:454-463). So, one is autonomous (is an agent, rather than a heap of impulses, as Korsgaard describes it) when one has unified oneself and this is accomplished by controlling one's actions which, in turn, requires acting according to the appropriate principle (the categorical imperative). This explanation works in retrospect or when examining one particular action in isolation, asking a question like 'was this action autonomous' or 'will this unify myself as an agent', and in this sense Korsgaard's explanation of agency is complete. There is an explanation of the activity of being an agent in the form of its defining activity (facing the problem of self unification) and its defining attribute (having unified oneself).

This explanation of agency is not yet complete because these two constitutive elements cannot both be required to be an agent, as opposed to a heap of impulses, in all of the cases in which we have agency. Both Kant and Korsgaard argue that free will is something that exists *from the perspective of the subject making a decision* (Kant, 1785, 4:448 and Korsgaard, 1996b, pp. 94-95) and ascribe the existence of freedom to the nature of reason and reflection. The same element of our constitution that gives us freedom is the element Korsgaard (1996b) cites as our deepest identity when explaining why reflective endorsement has moral authority (pp. 100-102 and 103-112). This is where the contention between the two conditions for being an agent is found: it cannot simultaneously be the case that one is an agent when facing the problem of exercising practical reason to unify (control) oneself *and* that one was not an agent, after all, when one fails to do so. It seems tempting, on the face of the issue posed by this apparent contradiction, to explain that the problem faced by Korsgaard (and Kant) is that *either* one was an agent when making the attempt, or one was not. If this is an accurate description of the problem it would be a significant issue for Korsgaard's theory because it would entail that, in order for unity to be a necessary requirement, *simply having the faculties required for self reflection is not enough for agency*. Furthermore, it would mean that in many cases (perhaps the vast majority) subjects are not agents at all. If we are "not an agent after all" (Korsgaard, 2009a, p. 213) in cases where we attempted to unify ourselves but failed to do so, then it seems evident that a great many people would fail to be agents in a great many cases. This claim appears, on the face of it, as though I should be required to support it further; perhaps with some empirical measure or another that demonstrates people frequently fail to unify themselves. However, the point is merely that even if they do fail to unify themselves they were still agents, in a meaningful sense, when faced with the problem of self unification. In addition, I suspect the claim that many people do not act, at least some of the time, in a principled manner, with the categorical imperative informing that principle, is not a controversial assertion.

This would be deeply problematic because Korsgaard, and Kant, employ the value of humanity in their moral theories and argue that we ought to value other people *because we value our own autonomy by the very act of exercising that autonomy* (Kant, 1785, 4:428-431 and Korsgaard, 1996b, pp. 120-125). Kant (1785) explains that having the faculty of reason entails that one has value:

[T]he human being and in general every rational being *exists* as an end in itself, *not merely as a means* to be used by this or that will at its discretion; instead he must in all

his actions, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end*. ... Beings the existence of which rests not on our will but on nature, if they are beings without reason, still only have relative worth, as means, and are therefore called *things*, whereas rational beings are called *persons* because their nature already marks them out as an end in itself, that is, as something that may not be used merely as a means, and hence so far limits all choice (and is an object of respect). These, therefore, are not merely subjective ends, the existence of which as an effect of our action has a worth *for us*, but rather *objective ends*, that is, beings the existence of which is in itself an end, and indeed one such that no other end, to which they would serve *merely* as means, can be put in its place since without it nothing of *absolute worth* would be found anywhere; but if all worth were conditional and therefore contingent, then no supreme practical principle for reason could be found anywhere. (4: 428)

Kant's point is that the objectivity of his moral theory depends on the necessity of the value of every rational being. This is because the rest of his moral theory is derived from that value (the value of autonomy) and the objectivity of that moral theory is grounded in the necessity of valuing both one's own autonomy and the autonomy of others.

Korsgaard (1996b) puts forward a similar line of argument when she explains that the activity of reasoning demonstrates why one's own value is necessary:

[H]uman consciousness has a reflective structure that sets us normative problems. It is because of this that we require reasons for action, a conception of the right and the good. To act from such a conception is in turn to have a practical conception of your identity, conception under which you value yourself and find your life to be worth living and your actions to be worth taking. That conception is normative for you and in certain cases it can obligate you, for if you do not allow yourself to be governed by any conception of your identity then you will have no reason to act and to live. ... You are an animal of the sort I have just described. And that is not merely a contingent conception of your identity, which you have constructed or chosen for yourself, or could conceivably reject. It is simply the truth. It is because we are such animals that our practical identities are normative for us, and, once you see this, you must take this more fundamental identity, being such an animal, to be normative as well. You must value your own humanity if you are to value anything at all. Since you cannot act without reasons and your humanity is the source of your reasons, you must value your own humanity if you are to act at all. It follows from this argument that human beings are valuable. (pp. 122-123)

Korsgaard's point, like Kant, is that we derive both normativity and the objectivity of normativity from the necessity of valuing ourselves and, therefore, valuing all rational agents. Notice that, in this context, for both Kant and Korsgaard, the necessity of valuing agents (persons, in Kant's terms, and humans for Korsgaard - but rational, reflective, beings in both cases) is not dependant on them having correctly unified themselves; rather, it is the process of attempting to unify oneself (the role of the subject, the activity of reasoning) that supplies the value.

The value of agency, for Korsgaard and Kant, is derived from the activity of being an agent *and* it is the case that failing to unify yourself by controlling your actions according to the appropriate principle causes you to fail in that activity. I have pointed out the apparent tension between these two claims, but this problem is overcome by disambiguating them. The claim that one is “not an agent after all” if one fails at self constitution and does not unify oneself is *not* the claim that one is not an agent in the same sense that one is an agent when one faces the problem of unifying oneself (deciding what to do). When one faces the problem of unifying oneself one is an agent in the sense that one has the faculty of practical reason, but one is not an agent if one fails to unify oneself in the sense that one has failed to *successfully* utilise this faculty. The crucial point is that they still *faced the problem of unifying themselves* and it is the facing of that problem that is constitutive of agency.

A particular conception of freedom, the nature of autonomy, free will, agency, and the nature of the self emerges from both Korsgaard and Kant’s use of the value of humanity. This conception of freedom will be covered further shortly as I establish the compatibility of Korsgaard’s theory with my argument for scalar deontology. The point is that, as both Korsgaard and Kant argue, agency (control, freedom) exists *from the position of the subject who is exercising it* and it is this sense in which agency exists even for subjects that do not successfully unify themselves. Such a subject, one who does not unify themselves (one who makes the wrong decision) and becomes the “heap of impulses”, is also *not* an agent in the sense that they failed to unify themselves as one. The term, agent, means different things in these two cases and scalar deontology only exists in the perspective of the subject who is exercising their agency. When measuring one’s actions after the fact they either unified the subject in question or they did not; however, when measuring one’s actions from the perspective of an agent currently making a decision it is not binary in this same manner. As an ongoing activity one can become more or less unified as attempts at self unification are made because this attempt for self unification is *always ongoing for so long as the agent exists*.

The sense of agency required to establish scalar deontology is the sense that only exists in the subject as they undertake the activity constitutive of agency (making decisions, the ongoing attempt to unify themselves). Notice that this is the same sense of agency that both Kant and Korsgaard utilise to establish that people have value: they do not argue that *only* people who successfully unify themselves have value, they argue that *all* people have value *because, like you, they all face the problem of self unification*. You would, after all, have value even if you never unified yourself successfully. Scalar deontology is established on the notion of agency that exists from the perspective of a subject facing the problem of agency (the problem of unifying oneself by deciding what to do) but establishing scalar deontology on these grounds is not a problem because the value of humanity requires that same sense of agency. So, while measuring one’s agency in a past sense, examining whether a particular decision unified you or not, does not allow for a scalar measure of value that is not problematic for scalar deontology because such a sense of agency also does not allow for the valuing of subjects that failed to unify themselves; that is to say, our value (the value of persons) comes from the sense of

agency grounded in the perspective of the active subject, so it is no surprise that the scalar nature of value comes from this same sense of agency.

Another way of explaining the point, the sense in which agency as conceived by Kant and Korsgaard entails a scalar understanding of value, is that the value of non-unified agents is found in the extent to which they are engaged in the ongoing activity of becoming unified. It does not matter whether they ultimately succeed at that goal or not, they have value because they are engaged in the activity of trying to constitute themselves; furthermore, from the perspective of the subject engaged in this activity it is never the case that one actually does become fully unified, but this is not problematic because their value, as an agent (a person), is established by partaking in the activity. This is a different way of explaining the same argument for the value of humanity put forward by Kant and Korsgaard which is why I am arguing that their positions, broadly understood in relation to their grounding in the nature of agency, are compatible with scalar deontology. From the perspective of the subject, the agent, engaged in self constitution, they never actually become unified because the activity is never complete: there is always another decision to make. One might argue that their unity could be measured in isolated cases, such as reflecting on one particular decision or when they have died, but that entails considering agency in a different sense than the sense in which agency is the source of value; because agency is the source of value in the sense that agency explains the perspective of a subject attempting to unify themselves.

My point is that there is an element to agency that Korsgaard has not fully appreciated: the extent to which one is coherently self constituted is not absolute, *one is not simply coherent or not*. Rather, one *seeks to become coherent* and the reason for this is that autonomy itself has a goal, there is something it is aiming at, and that goal is not so much *finished* as *furthered*. This claim, that the extent to which one is coherently self constituted is not absolute, is not compatible with Korsgaard's constitutivism, on the face of the matter, because, as Korsgaard explains, one has either acted according to the correct principle or one has not. This, apparent, incompatibility can be overcome when the importance of the temporal element of agency is considered: the claim, put more accurately, is that the extent to which one is coherently self constituted is not absolute *when considering the agent over time* which is, after all, how the agent sees themselves and the context in which the agent attempts to constitute themselves (not as a finished project, but as an ongoing one).

Another way to explain this point, that may help in clarifying the issue, is that value exists *when considering the agent that faces the problem of self constitution* rather than considering the agent that has already acted. Remember, freedom exists *when making the choice* rather than after the fact and, according to Kant and Korsgaard, value is derived from autonomy accordingly. We must value our own autonomy, by exercising it, because that is a necessity from the perspective of the subject; one cannot be in the position of making a decision without

also valuing one's ability to make a decision⁶². The subject's perspective *during the activity of reflection/deliberation* is also the position from which one values self constitution; or, rather, it is *because of this perspective* that one is faced with the problem of unifying oneself. Because it is from this perspective that this activity, self unification, exists it is also from this perspective that normativity exists (remember that, according to Korsgaard, normativity is grounded in autonomy which is the process of self unification). This entails a scalar understanding of value because from this perspective unifying oneself is not something one has *done* but it is something that one is *doing*. Notice that the crucial element of this line of argument is establishing that the constitutive activity of normativity is an *ongoing activity*. Once this is established a scalar understanding of value follows because it limits the understanding of value to what facilitates the aims of the activity *more or less* (because the activity can no longer be considered something that is accomplished or not).

This can also be explained, in Korsgaard's terms, by referring to the sense in which obligations exist as reactions to threats to one's identity (see Korsgaard (1996b pp. 102-103). In order for failure to unify oneself to be a threat to my identity it must be *my* mistake. An 'error' in self unification is possible because I find my agency in the problem facing me, the problem of agency (deciding what to do in the context of reflection), and that problem is what exists over time. It exists over time *because agency exists over time* and the mistakes made in attempting to solve that problem are mine *because agency exists over time*; because autonomy and freedom, and therefore normativity, exists over time. It is the solving of this problem that can be furthered more or less because it is not an activity that is completed. Although particular problems that are faced may be solved the ongoing problem of unifying oneself is not and it is this point that is the 'evidence' of my claim. By evidence I intend to invoke the same manner of justification employed by Korsgaard (1996b) when she argues that the structure of conscious thought, the necessary elements of reasoning, that supports her explanation of agency and its constitutive elements (pp. 92-93). My point is that the same structural elements of agency identified by Korsgaard in this manner also demonstrates that agency is an ongoing activity. We find, in the structure of our own mind, that we face the problem of reflection (what to do and how to utilise practical reason in order to make that decision), as Korsgaard argues, but we also find that this is an ongoing process.

I am now in a position to summarise the compatibility between scalar deontology and Korsgaard's constitutivism; although elements of this discussion related to the nature of the

⁶² This is the notion behind grounding normativity in autonomy: that our faculty of reason *necessarily* values itself as a lawgiver. Kant (1785) explains that the grounds of the categorical imperative must be found in something common to the will of all rational beings and that such common ground is found in the fact that "*rational nature exists as an end in itself*" (4:429) because we necessarily represent our own existence to ourselves in this manner (4:427-429). Korsgaard (1996b) argues that normativity is derived from our nature as autonomous animals because the reflective structure of our own mind necessarily entails valuing the results and process of rational reflection (p. 124, 128-130, 165). Korsgaard (2009a) supports this argument by explaining that it is through reflection that we choose our own actions and that by undertaking this process we, necessarily, endorse the value of of the deliberative process (and, therefore, the value of reason as such) (pp.107-108, 126-127, 130, 175-176, 213-214).

ongoing activity of agency and the nature of autonomy will continue in §§ 3.5-3.8. Korsgaard's claim, that we must unify ourselves in order to be agents, does appear incompatible with scalar deontology. It cannot be the case that our attempts at unification have *more* or *less* value in proportion to how well they facilitate our attempts to unify ourselves if we must be unified before being of value. My argument is that this incompatibility is not as problematic as it seems because, although value is derived from agency, there is still a meaningful sense, for Korsgaard, that we are agents *even when we are not yet unified*. Because we derive value from the perspective of the agent and that perspective is of a subject *facing the problem of unification* (facing the challenge of unifying oneself), rather than from the perspective of already being unified, the value derived from agency must exist *prior* to unification. It is this position, the position of the subject seeking unification, that entails scalar deontology. The point is not to deny that there is a tension between elements of Korsgaard's constitutivism, in particular her conception of agency, and scalar deontology. Instead, the point is that by prioritising one conception of agency over the other, the perspective of the rational subject facing the problem of unification over the retrospective perspective of a subject who has unified themselves, this contention tension can be avoided. Furthermore, the perspective that is being prioritised is the one that is cited by Korsgaard, and Kant, as the source of value.

The compatibility of scalar deontology with Velleman's constitutivism is easier to establish than with Korsgaard's constitutivism because it is not faced with the claim that a subject must already have accomplished the constitutive goals of action in order to have value⁶³. Velleman (2009) argues that the constitutive aim of action is to make oneself intelligible to oneself, which is a way of saying that we, by our very nature, seek to make ourselves coherent to our own conception of ourselves (pp. 18-20, 26-27, 31-33, 133-135, 145-149). His point is that normativity is a type of ongoing push towards rational development (Velleman, 2009, pp. 148-149). Velleman describes this as a "Kinda Kantian strategy" (p. 149) because his position does not entail that agents are *necessarily* bound to pursuing the categorical imperative simply by virtue of being agents.

In this regard my argument for scalar deontology and Velleman's constitutivism are in agreement: normativity is found in the ongoing pursuit of self constitution. Self constitution can, for the purpose of outlining the argument for scalar deontology, be understood as either making oneself intelligible to oneself (as Velleman conceives it) or unifying oneself (as Korsgaard conceives it). In the context of establishing compatibility between scalar deontology and Korsgaard's constitutivism I intend to fully implement the Kantian strategy, rather than Velleman's restricted usage. Where Velleman (2009) argues that "practical reasoning has favored morality without requiring or guaranteeing it" (p. 149) I seek to establish the necessary grounding for morality in the ongoing activity of self constitution; this necessity is crucial because it is the necessity of normativity that establishes its objectivity, according to the Kantian strategy. However, in the context of establishing compatibility between scalar deontology and

⁶³ Although, as I explained, a closer examination of Korsgaard's argument finds that she is also not committed to this claim; at least, she is not committed to claiming that *the source of value* entails that *only* unified subjects have value. My point here is that such a clarification is not necessary to establish compatibility with Velleman's constitutivism.

Velleman's constitutivism I merely seek to establish that scalar deontology follows from the same element of our constitution that Velleman derives normativity from. In both cases, Korsgaard's and Velleman's theories, scalar deontology is compatible with Kantian constitutivism because it is derived from the same element of our constitution as normativity but in Korsgaard's case it is also required that whatever is derived from our constitution is a necessary element of that constitution (otherwise it would not be objective) while in Velleman's case it is sufficient for it merely to be present, because his objectivity is grounded in relativist foundations (I will explain this further in the relevant subsection). However, this difference between Korsgaard and Velleman does mean that Velleman's theory is not fully compatible with all of the claims I make in support of scalar deontology, because I am intending to establish that the obligation one has to oneself, one's duty, is both scalar and objective.

Velleman's constitutivism is compatible with grounding normativity in the ongoing activity of self constitution because he argues that the activity of making oneself intelligible to oneself, the activity of self constitution, is an ongoing activity: we are already in agreement on this point. This does not entail that Velleman is already in agreement with all of the elements required for scalar deontology because there is another crucial point required for my argument that Velleman does not agree with: his constitutivism is not committed to the Kantian strategy, at least not to the extent required to establish objective morality. In the § 1.5 I explained that, in response to Enoch's shmagency problem critique of constitutivism, Velleman endorsed a relativist foundation for his morality.⁶⁴ Scalar deontology employs the Kantian strategy to its fullest extent, rather than Velleman's "Kinda Kantian" employment which results in relativist foundations, and, in doing so, establishes objective foundations for the scalar nature of our obligation to ourselves (scalar duty) in the necessity of the elements of our constitution that ground normativity. The point of contention between scalar deontology and Velleman's constitutivism is that Velleman argues that the elements of our constitution that ground normativity are not necessary for one to be an agent, while scalar deontology argues that it is the necessity of those elements, necessity for one to be constituted as an agent, that entail objective normativity.

⁶⁴ Remember that Velleman also talks in terms of objective morality, despite these relativist foundations, because he is adopting a definition of objectivity that employs a limited scope and, in doing so, allows some measure of compatibility between relativism and objectivity. To recap this point, the idea is that morality is objective from the particular perspective of the subject in question: given the particular context the answer is objectively true, but the context in question is itself relative. The resulting normative theory can provide objective answers *in particular contexts* but does not provide objective answers in any further sense. That is to say, the answers to normative questions, according to Velleman, are objective in the context in which the questions are asked but not in any further sense: they are not *necessary* or *'real'*; except, of course, in the sense in which a subject in the right context might perceive them as such. My point is that scalar deontology is not satisfied with this qualified objectivity: by employing the Kantian strategy in a stronger sense than Velleman (not "Kinda Kantian", but "Kantian Proper") I intend to provide grounding for normativity that is compatible with objectivity in the fullest sense. This is why it is necessary for me to have provided the Kantian reply in the first section of my thesis when discussing Velleman and Enoch's shmagency problem argument. I needed to demonstrate that Velleman's theory, or something appropriately similar, can endorse 'fully fledged' objectivity without succumbing to the shmagency problem or the development of scalar deontology would itself succumb to Enoch's critique.

Scalar deontology is compatible with Velleman's constitutivism in the same sense that the Kantian reply to the shmagency problem that I put forward in § 1.6 is. Because scalar deontology utilises the Kantian strategy to establish the objectivity of the normativity it grounds it is a fundamental deviation from Velleman's constitutivism. Velleman is attempting to establish normativity that is relative to the nature of the subject while scalar deontology attempts to establish normativity in *necessary* elements of subjects and, for that reason, is an attempt to establish *objective* normativity. These are two different types of projects because they are attempts to establish different types of knowledge, one relative and the other objective, and, for that reason, scalar deontology is *not* compatible with Velleman's constitutivism: they, fundamentally, cannot be compatible because scalar deontology is an attempt to establish objective normativity while Velleman's constitutivism is an attempt to establish relativist normativity. While the compatibility between Korsgaard's constitutivism and scalar deontology is complicated, because it requires focusing on the grounding of value in one theory of agency over another, the compatibility between Velleman's constitutivism and scalar deontology is straightforward because both of them, Velleman's theory and scalar deontology, ground normativity in an ongoing activity. However, the problem with the compatibility between Velleman's theory and scalar deontology is also straightforward because they are both attempting to establish different, and incompatible, things. They are, fundamentally, incompatible.

Despite this fundamental incompatibility scalar deontology is compatible with many of Velleman's claims, because scalar deontology grounds normativity in the constitutive activity of agency, rational progress, and this is also where Velleman's constitutivism grounds normativity. Further claims made by Velleman that are compatible with scalar deontology include the claim that the subject provides the criterion for correct answers to normative questions, the notion that making oneself intelligible to oneself is the source of normativity, and the argument that we discover the constitutive activity of normativity by examining the nature of our own agency. These are core claims to Velleman's argument (see §§ 1.2-1.4) that explain, respectively, how we determine whether answers to normative questions are correct, where normativity comes from, and how we learn these points. The combination of these claims is what supports the various claims made by Velleman's theory: they are core tenets of his theory that are compatible with scalar deontology, despite the most fundamental claim made by Velleman's theory (that morality is relative) being incompatible with scalar deontology. For this reason, in § 3.8 where I discuss Velleman's theory of epistemic freedom, I will put forward an argument that explains how Velleman's theory *as he presents it* is compatible with scalar deontology. In doing so I will be assuming that no significant problems arise from Velleman's position on the nature of objectivity because, if they do arise, those problems would not be from scalar deontology but from his theory itself.⁶⁵

⁶⁵ It is my suspicion that Velleman's position on the nature of objectivity is untenable because his argument that objectivity is restricted to particular frames of reference either fails to deliver relativism or fails to deliver objectivity. However, critiquing Velleman's position is not my purpose here and, for that reason, I do provide an argument, § 3.8, that assumes his position is tenable and establishes the compatibility of scalar deontology with his Kantian constitutivism in that context.

Scalar deontology could be considered a *development* of Korsgaard's constitutivism that demonstrates what follows from focusing on the ongoing activity constitutive of agency. Velleman's constitutivism is not compatible with scalar deontology in this manner because the two are making fundamentally different claims: one is trying to establish relative normativity in contingent elements of agency while the other is attempting to ground normativity in necessary elements of agency and, in doing so, establish objective normativity. Despite this, core claims of Velleman's argument (the focus on the ongoing activity of reason, how we learn of normative facts, and their relationship to ourselves) are compatible with scalar deontology. The compatibility of scalar deontology with Velleman and Korsgaard's constitutivist theories is different but, nevertheless, there is a relationship between the compatibility of the two to scalar deontology: scalar deontology might be considered as the meeting point of the two theories. Scalar deontology is the combination of the Kantian strategy, which establishes objective normativity based on necessary elements of the self, with the constitutivist approach, which establishes the nature of normativity on the ongoing activity that is constitutive of the self. That is to say, if you take Korsgaard's objectivist grounding and combine this with Velleman's focus on the ongoing activity of constituting ourselves, you get something approximately like the arguments for scalar deontology in the following section - the argument that normativity exists in the position of the subject making a decision (by employing practical reason) and in that position the obligation of the subject to themselves is scalar (something they are fulfilling to a greater or lesser extent as part of an ongoing project of self constitution).

3.5 The source of normativity: the argument for a scalar deontology

In the §§ 3.0-3.4 I have put forward the initial argument for scalar deontology and explained its relationship with the Kantian strategy and the constitutivist approach. With these in place I can now develop the argument for scalar deontology by providing a more detailed explanation of why it follows from Kantian constitutivism. The argument for scalar deontology is derived from the combination of the constitutivist approach and the Kantian strategy. Because of this combination it finds inspiration in elements of Korsgaard and Velleman's constitutivist theories. The crucial development of scalar deontology, that allows the scalar measure of one's obligation to oneself, is to ground normativity in the ongoing activity of agency. The ongoing activity of agency entails scalar deontology because it removes the focus of deliberation from any particular decision, which allows one's obligation to oneself to be contextualised within the ongoing project of self constitution.

Normativity, according to both constitutivism and the Kantian tradition, is derived from (grounded in or founded upon) constitutive elements of the subject. The particular constitutive elements focused on by Kantian constitutivists, in order to derive the source of normativity, are elements of agency. The reason for this is that, by deriving normativity from the constitutive elements of agency in particular (rather than, say, our identity broadly understood), normativity is derived only from elements of our identity that are inescapable. This is the connection between constitutivism, as such, and the Kantian strategy: the particular element of what constitutes oneself that is under examination when deriving normativity is an element of the self that is necessary - agency. My contribution to this line of reasoning is to identify that agency is an ongoing activity; this means that the activity of agency, self constitution, is not something you *have done* or something you *do*, so much as it is an activity you are *doing* and the obligation that is derived from agency must be understood in this context.

Self constitution is the constitutive activity of agency in the sense that it is the activity that makes one an agent. As I explain § 3.4 Korsgaard describes this as constituting oneself coherently and Velleman describes this as making oneself intelligible to oneself; both are referring to the activity of unifying oneself by striving to be what you should be (an intelligibly or coherently constituted agent). Scalar deontology arises from the need to understand the categorical imperative within the context of the ongoing activity of agency (I explain this further in § 3.9). The categorical imperative is derived from autonomy and autonomy must be capable of being understood in the same context within which it is exercised: the context in which autonomy is exercised is the context of a subject who is utilising their rational faculties to undertake the activity of making a decision. This activity, the activity of agency, is an ongoing activity and is only properly understood in that context because of its relationship with freedom which must be understood in the context of a subject that is exercising their free will (see §§ 3.6-3.8). Once the categorical imperative is understood in the context of the ongoing activity of agency then each specific application of the imperative (every particular decision, say) is *part* of this ongoing activity and, therefore, must be understood in this context. Understanding particular decisions, particular applications of the categorical imperative, as part of the ongoing activity of the categorical imperative, constituting oneself, requires appreciating the contribution that this particular

application has to the ongoing activity. This is why the agent's unity being an ongoing activity entails a scalar deontology: every particular application of the categorical imperative is itself a *part* of the ongoing activity that the categorical imperative is derived from. While elements of this pursuit of unity may be discrete events in some sense their relationship to one's unity is not: this is because one's unity is derived from the activity of being the causal force behind one's actions and decisions (see §§ 3.6-3.8). A subject is unified when they have exercised their freedom by utilising their rational faculties to decide what to do through a process of reflective deliberation (see §§ 3.7 and 3.8 for Korsgaard and Velleman's explanation of this process). The relationship between whatever constituent elements comprise this process and this process itself is the role that constituent element plays in the unification of the self; hence, the constituent elements are involved in the pursuit of unity insofar as they are involved in this process. The categorical imperative, one's obligation (duty) to oneself, is ongoing and the particular applications of it are merely parts of that activity. These parts have a scalar contribution to how well you are fulfilling the obligation as a whole (that is, how well you are constituting yourself).

My argument is that we can derive a scalar deontology from the activity of constituting oneself. The idea is that once the constitutive activity of agency is established as both the source of normativity and the purpose of our agency the features of that activity can be examined to determine the nature of morality. This examination reveals the relationship between the particular applications of the categorical imperative and the ongoing activity they comprise. This relationship is such that each particular application provides a scalar contribution to that ongoing activity (the activity of self constitution). Finally, the particular applications providing this scalar contribution are themselves applications of the categorical imperative and, therefore, in showing that these particular applications provide a scalar contribution I have demonstrated that the categorical imperative itself is scalar. At least, when understood in the context of the constitution of the self. So, this argument points out that the extent to which one is managing to constitute oneself is also the extent to which one has fulfilled one's obligation to oneself:

Premise 1: self constitution has constituent activities that comprise part of the ongoing activity of constituting oneself

Premise 2: the constituent activities that make up the activity of self constitution provide a scalar contribution to the goal of self constitution

Conclusion 1: self constitution is scalar

Premise 3: self constitution is the categorical imperative

Conclusion 2: the categorical imperative is scalar

Notice that, in premise 3 and the move to conclusion 2, this claim requires that self constitution is both established as a formulation of the categorical imperative and that any traits of this formulation of the categorical imperative extend to the other formulations.

The hope is that demonstrating that one formulation of the categorical imperative is an obligation that is fulfilled to a greater or lesser extent will demonstrate that this is true for all formulations of the categorical imperative. If this can be established, or, rather, to the extent that this can be established, then scalar deontology follows; *if* self constitution is a formulation of the categorical imperative and *if* self constitution itself is scalar. So, there are three points that need

to be established in order to derive a scalar deontology from Kantian constitutivism: firstly, I need to establish that the activity of self constitution is scalar, then, secondly, I need to demonstrate that the activity of self constitution is a formulation of the categorical imperative, and, third, I need to explain why demonstrating that one formulation of the categorical imperative is scalar entails that the categorical imperative, as such, is scalar.

3.6 Scalar self constitution: the ongoing activity of making ourselves into what we are

Self constitution is scalar because it is not something you have done or something you are going to do, it is something you are *doing*. It is, in that sense, an ongoing activity. Self constitution is undertaken from the perspective of an agent who is undertaking constituting themselves and it needs to be understood in this context. It is from this position, the position of the agent constituting themselves, that it makes sense to claim that it is something the agent can develop towards (something they can get better or worse at). This is the same position from which the agent is free, the position within which they have autonomy, and this is no coincidence: one's freedom *is* one's ability to pursue the ongoing activity of self constitution.

The notion that freedom needs to be understood as something that exists from the position of an agent exercising their rational faculties is utilised by both Kantian moral theory and Kantian constitutivists. Kant (1785) explains that we need to understand ourselves as both a part of the world and as separate to it:

[A] rational being must regard himself *as intelligence* (hence not from the side of his lower powers) as belonging not to the world of sense but to the world of understanding; hence he has two standpoints from which he can regard himself and cognize laws for the use of his powers and consequently for all his actions; *first*, insofar as he belongs to the world of sense, under laws of nature (heteronomy); *second*, as belonging to the intelligible world, under laws which, being independent of nature, are not empirical but grounded merely in reason. (4:452)

Kant's point is that there is a sense in which we can understand ourselves as governed by the laws of nature and a sense in which we can understand ourselves as free to make our own choices. My point is that the sense in which we can understand ourselves as free reveals that self constitution is something we pursue to greater or lesser degrees of efficacy: that is, that self constitution is scalar.

The notion that freedom needs to be understood from the position of the subject is utilised by both Korsgaard and Velleman to develop their Kantian constitutivist positions. They utilise this notion to establish that freedom is how we interact with ourselves and this is the same manner in which I am utilising the point to establish that self constitution is scalar. The point I am attempting to establish is that we treat ourselves as scalar in the same sense that we treat ourselves as free. The hope is that I can establish that we must treat the task of self constitution as scalar because, in order to understand the position from which we are free, understanding our role in this task requires regarding it as something we are always pursuing rather than something we can accomplish. If self constitution is something we are in constant pursuit of, rather than something we succeed or fail at in an absolute sense, it becomes the type of thing we are pursuing to varying degrees of success rather than something we have entirely succeeded or failed at.

Understanding one's pursuit of self constitution as a matter of succeeding or failing in the activity you are currently undertaking allows one to make sense of scalar claims about that activity. By this I mean claims that you are doing a better or worse job at adhering to your

obligation to yourself: claims of the form “it was not the worst thing I could have done” or “I am getting better at doing the right thing”. Such claims amount to the claim that one is getting better or worse at constituting oneself and can be restated in the following forms to reflect this: “I could have constituted myself worse than I did” or “I am getting better at constituting myself”. To clarify, my claim is not that people are *actually* making claims about their own project of self constitution when evaluating their own moral progress and performance (by performance I mean the degree of their success at solving moral problems - doing the right thing). Rather, my claim is that it follows from Kantian constitutivism that *correctly formulated* evaluations of one’s normative performance will be about one’s self constitution. This is the correct formulation of an evaluation of a subject’s normative performance because normativity is, at least according to Kantian constitutivism, about one’s self constitution.

Evaluations of one’s self constitution are scalar because you are not evaluating whether you are correctly self constituted or not, at least not in the sense that you are evaluating whether you have achieved it or not. Rather, you are evaluating how you are doing at the task of pursuing the aim of self constituting. To clarify, my point is not that this is how individuals actually engage in self evaluation (this would be an empirical question); my point is that this is how to correctly formulate a statement about your performance at self constitution (the task of normativity). This is the correct formulation of a subject’s normative performance because normativity is something that a subject is doing as an ongoing project and needs to be understood in that context. The nature of the activity of self constitution requires that it be understood as something that is ongoing, rather than something that is finished⁶⁶. Self constitution is not something you are ever finished undertaking and to evaluate it as something that has, or has not, been accomplished is to misunderstand its nature. The nature of self constitution is that it must be understood in the context of your freedom and that means it must be understood in the context that freedom can be understood, which means the position of a subject making a decision. One might suppose that the task of self constitution can be completed in cases where the agent has died, because they will no longer be constituting themselves. However, the necessity of understanding freedom from the perspective of the subject that is exercising it (which I discuss further in §§3.6 and 3.9) means that the activity of self constitution can only be understood in cases where the subject is still alive and capable of exercising their freedom. Normativity, and so scalar normativity, is derived from autonomy and autonomy can only be understood in a particular context and that context requires that the subject be alive and able to exercise their freedom. The point is that a deceased subject is finished constituting themselves, but they are also no longer autonomous and it is only within the scope of autonomy that your obligation to yourself is scalar.

⁶⁶ Remember, as explained in §§ 3.3 and 3.4, the activity of self constitution needs to be intelligible from the perspective of the subject that is undertaking the activity. It is in this context that self constitution is scalar. Providing a scalar theory of constitutivist normativity allows the subject to explain the activity of self constitution in the same context with which they understand the development of their project of self constitution (see § 3.9 for the related formulation of the categorical imperative).

Self constitution must be understood from the position of a subject making a decision because that is how freedom must be understood. Self constitution is the activity of exercising one's agency, of making decisions, and for that reason it is the activity of freedom - it is the constitutive activity of freedom. This is the argument I have adopted from Kantian constitutivism: the freedom of a subject, your freedom and every other persons, must be understood from the position of a subject that is making a decision. That is to say, freedom exists only from the position of a subject that is exercising it. This is how, as Kant put it, one comes to regard oneself as an intelligence not belonging to the world of sense but to the world of understanding. My development of this constitutivist argument is that we must formulate evaluations of self constitution within the same context that we can understand self constitution itself. Self constitution, the constitutive activity of freedom, must be understood from the position of the subject and so it must be evaluated in that context too. Or, at least, it must be evaluated in a manner that can explain the nature of the activity in the same context in which the activity exists.

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Evaluations of our performance at the task of self constitution are only complete when they include those kinds of evaluations that follow from the same context in which the thing we are evaluating exists. So, because self constitution exists in the context of a subject that is making a decision, exercising their freedom, any examinations of self constitution can only be complete if they include what is required to examine it in that context. This is where the relationship between the different formulations of the categorical imperative, which is developed in § 3.7, are impacted by the point that self constitution is scalar from the position of the agent undertaking the task of self constitution. The full story of normativity, including any judgements about a subject's performance at the task of normativity, cannot be told without including the nature of normativity in the context in which it exists.

Developing my argument further requires examining the nature of the activity of self constitution as presented by Korsgaard and Velleman. These two Kantian constitutivists reveal that normativity is derived from the activity that is constitutive of agency and that this activity is something that exists in the position of a subject undertaking it. An examination of how they establish this point is required for me to explain how Kantian constitutivism entails that self constitution must be understood as an ongoing pursuit from the perspective of the subject pursuing it. However, prior to this examination I should qualify the argument I am giving and point out two problems that arise.

The qualifier I need to attach to my argument for scalar deontology is that it performs better as an argument that scalar deontology is *possible* than it does as an argument that deontology is

⁶⁷ James Dreier (1997) raises a concern I consider to be similar in "Humean Doubts about the Practical Justification of Morality" where he argues that norms which are impossible to violate do not make sense (p. 91). His point is that there is at least some sense in which violating norms appears to make sense, but Kantian's argue that violating norms is incoherent. This tension can be resolved by pointing out that both parties are, in a sense, correct: it is incoherent to violate the moral law, but because our coherence is scalar the incoherence of violating the moral law is not absolute.

necessarily scalar. In § 3.0 I explained that I am arguing that Kantian constitutivism entails that a scalar deontology is possible, but when explaining the argument in detail I do so in terms of deontology necessarily being scalar. This is because when my argument deals in the manner in which we understand our own freedom it is dealing in necessary elements of the nature of a subject. Presenting such an argument, founded in the nature of what it is to be a subject, results in presenting an argument that the conclusion is necessary, when, in a sense, the conclusion is contingent upon the reliability of our own access to the relevant elements of our nature. This is a result of the argument I am providing for scalar deontology utilising core elements of Kantian constitutivism, elements that are themselves developments of Kant's philosophy. The primary point I am utilising for this argument regards the nature of freedom and its relationship with morality. This is supplemented by assertions regarding the nature of apperception (the ability to examine the nature of consciousness and derive knowledge from that access to the structure of one's own mind). These elements of Kantian constitutivism are extensions, by Korsgaard and Velleman, of the Kantian tradition and are defended and developed by the philosophers utilising them. My point is that any problems with the analysis of the nature of agency undertaken by Korsgaard and Velleman are likely to be inherited by my argument for scalar deontology. In this sense, my argument is better understood as an argument that scalar deontology is possible; although, it is best presented as an argument that deontology must necessarily be scalar (because the argument depends on premises that might turn out to be false, see the two paragraphs below).

For the same reason that I must add this qualifier I need to identify two problems that arise from my argument for scalar deontology. By dealing in the necessary nature of subjects my argument requires claims about the necessary nature of our freedom and the access we have to knowledge about that nature. The first assumption that might be challenged is that this entails particular claims about the nature of freedom. My argument entails the Kantian theory of freedom. Kant (1785) explains that we must, when in the position of the subject making a choice, regard ourselves as having free will (4:452-5:453). It is this claim that leads me to argue that we must understand the activity of self constitution in the same context that freedom exists and this is a claim about the nature of freedom and how it relates to morality. So, my argument for scalar deontology will inherit whatever problems stem from this claim - if Kant is wrong about freedom and the foundations for morality, then scalar normativity fails alongside the Kantian moral project.

The second assumption that warrants identification (as something that might be challenged) is that my argument does not successfully disambiguate between establishing that deontology is indeterminate and establishing that it is scalar. If, as I argue, we must evaluate self constitution in a manner that acknowledges it exists as an activity a subject is doing (that is, as something ongoing) then one might point out that it follows that self constitution is never finished and therefore can never be accomplished. This is not a problem for my argument insofar as it entails that we can be closer to, or further away from, self constitution. However, it might instead entail that self constitution is fundamentally indeterminate - that is, there is no fact of the matter about whether we are correctly constituted or not. The potential problem is that my claim that self

constitution must be regarded as something ongoing requires that it cannot be evaluated at all because it can never be finished. At least, it cannot be simultaneously finished and understood from the same position in which it exists, because you are only finished self constituting when you die, but at that point your obligation to yourself is finished and so the context in which scalar deontology can be understood is gone. Unlike the first problem, I am unable to address this concern in depth. Except, that is, to point out that the *finished* status of one's self constitution is indeed indeterminate - but that does not prevent the *ongoing* status of one's self constitution from being scalar. I don't think this is indeterminate, but false. At most one is fully integrated *at a time*. So, yes it is the case that you are never 'finished self constituting', but it is also the case that you always (so long as you continue to be yourself) have the aim of becoming more coherently self constituted. The potential indeterminacy relates to self constitution as a completed task in need of evaluation, while the scalar nature of deontology relates to the task in its ongoing sense.

While Kant argues that the subject must regard itself as belonging to the world of understanding Kantian constitutivists make this point by explaining that when we are in the position of making decisions about our actions we must regard ourselves as the cause of our own choices. The idea is that it is a necessity of making a choice that you regard yourself as the cause of the decision that is made. It is this sense in which we necessarily understand ourselves to be free and, because of that freedom, to have agency. This is the context within which we discover the source of normativity, the activity of self constitution. So, this is also the context from which I am attempting to derive the scalar nature of that activity and, with that aim in mind, my argument requires an examination of how the nature of this activity is established. This examination will be accomplished with an analysis of how Korsgaard and Velleman establish this point. The aim of this analysis is to demonstrate that there is a common point being made by both of these Kantian constitutivists, that this point relates to what they are deriving from Kant's philosophy, and that how this point is established requires regarding the activity of self constitution as an ongoing activity.

3.7 Korsgaard on freedom, agency, and normativity

Kantian constitutivism entails scalar deontology because of how it derives normativity from our nature. Scalar deontology is derived from the same place as Kantian constitutivism derives normativity: the necessary and constitutive elements of the self. The compatibility between these two projects, scalar deontology and Kantian constitutivism more broadly understood, is best explained with reference to how the constitutivist project is undertaken by neoKantians. For this reason this section examines how Korsgaard grounds normativity in freedom and explain why this is compatible with my argument for scalar deontology (in § 3.8 I provide the analysis of Velleman's constitutivism by examining how he derives the objectivity of his normative theory from our own engagement with our own project of making ourselves intelligible). Korsgaard's constitutivism derives normativity from the process of self constitution. She does this by establishing a relationship between the nature of autonomy, agency, freedom, and normativity. This relationship is established, argues Korsgaard, by explaining that all of these elements, of what we are, must be understood in the context of a subject who is undertaking the activity of making a decision and, in doing so, exercising their autonomy which, if they do so successfully, makes them free and requires them to endorse their own agency. Her argument is that the standpoint of autonomy, the subject undertaking the activity of making a decision, is what makes autonomy, agency, freedom, and normativity real. My argument is that the same standpoint is what makes normativity scalar. These two arguments are compatible because they are part of the same project, they are both part of the derivation of the nature of normativity from the necessary constitutive elements of being a subject (that is, of being what you are).

Korsgaard (1996b) argues that there is no tension between freewill and determinism by supporting Kant's argument that freedom is derived from the necessity of the subject regarding itself as in control of its own decisions when it is in the position of having to make a decision (p. 94). Korsgaard presents the supposed tension between determinism and freedom as arising from the notion that freedom entails that a subject might have been able to do other than what they have done. The idea is that freedom requires that the subject exercising their freedom could have chosen to act in a different manner than they did: it can be stated as the claim that 'you were only free if you could have done other than you did'. This results in a tension between the possibility of freedom and the (purported) deterministic nature of the universe because, if our actions were determined by the state of the universe preceding the moment of the decision, it is not the case that you could have done other than you did - what you did was determined. By utilising, and then developing further in her explanation of agency, Kant's theory of freedom Korsgaard presents the key observation that allows the development of scalar deontology - which is, that the nature of freedom is such that its existence must be understood in the context of the subject in the position of exercising that freedom.

Korsgaard (1996b) attempts to establish this claim by pointing out that "[i]t is because of the reflective character of the mind that we must act, as Kant put it, under the idea of freedom" (p. 94). This is a solution to the supposed problem of incompatibility between determinism and freedom because it explains the sense in which freedom exists. Freedom does not exist as the type of thing that, somehow, makes it the case that you could have done otherwise; rather,

freedom exists in the sense that it describes the position of the subject while it is making a decision. The idea, which Korsgaard is deriving from Kant and refining, is that freedom describes the structure of the process of rational decision making⁶⁸. By the process of rational decision making I mean the process of using your faculty of reason to reflect on a decision (a choice you are making) and then, as the result of that reflection, endorsing the decision. So, according to Korsgaard's development of Kant's theory of freedom, freedom is reflective endorsement. That is to say, you are in the position of being free when you are undertaking the process of reflective endorsement and, for that reason, you are free insofar as you are making your choices according to the process of reflective endorsement. This is how Korsgaard justifies the existence of freedom, explains why freedom is compatible with determinism, and how she connects freedom and agency.

Korsgaard's explanation of freedom connects freedom and agency by explaining that freedom is the same activity that is constitutive of agency. The structure of the reflective mind justifies the existence of freedom because it is the structure of the subject in the process of making a decision, which is the context in which freedom exists. This justification arises from the reflective nature of the mind of a rational subject which, as Korsgaard (1996b) explains, is evident because of the nature of the structure of our own minds:

[T]he human mind *is* self-conscious in the sense that it is essentially reflective. I'm not talking about being *thoughtful*, which of course is an individual property, but about the structure of our minds that makes thoughtfulness possible. A lower animal's attention is fixed on the world. It is engaged in conscious activities, but it is not conscious *of* them. That is, they are not the objects of its attention. But we human animals turn our attention on to our perceptions and desires themselves, on to our own mental activities, and we are conscious *of* them. That is why we can think *about* them. (p. 93)

So, for Korsgaard's constitutivism, the nature of freedom is that it exists in the sense that it is a necessary element of what it is to be an agent. Freedom is the reflection and the endorsement of decisions we make using the reasoning that is the reflective process. This is the same element of our nature that Korsgaard argues is the source of normativity and that she develops into the source of moral law. This common source is important for two reasons. Firstly, because by deriving normativity, morality, and freedom from the structure of our reflective minds she has derived her theory from a necessary element of our agency and, because of this necessity, established the objectivity of her theory. Secondly, as I shall explain, because this relationship between normativity, morality (the moral law), and the necessary element of our agency is the same relationship between our agency and the reason that deontology is scalar.

⁶⁸ One might object that this does not appear to address the issue of free will in the sense that it does not explain how we are free from deterministic causes. One might point out that if free will is merely acting rationally in the sense Kant and Korsgaard describe then it is not free in an important sense: rather than explaining how we are free to choose, they argue that we are 'free' when we obey the demands of reason. While this might be a relevant concern, I want to clarify that neither Kant nor Korsgaard are trying to establish the type of freedom that would provide such an explanation. Freedom in this context is not intended to have any connotations beyond what the Kantian conception of a free will entails.

Deontology is scalar because we must regard our freedom as an ongoing activity, something we are engaged in rather than something we have engaged in. This is the same context in which the human mind is, as Korsgaard argues, essentially reflective and the same context in which freedom exists. Regarding our freedom in this manner entails treating reflective endorsement, freedom, as something we are always attempting to accomplish, a problem we are always trying to solve. The problem we are always trying to solve is the problem of making the right decision (that is, the constitutive problem of our nature - trying to constitute ourselves). In this context our failures, the times we failed to make the correct decision, are not understood as instances in which we were not free but, instead, they are properly understood as factors that contribute to our ability to be free now. The times that we succeeded in making the correct decision are the same and this is true for all of the factors contributing to our ability to engage in the activity of freedom, reflective endorsement. When understood in the context of something we are doing, something ongoing, the contributing factors to that task are factors that either aid or hinder our ability to undertake the aim of the task. It is this sense in which deontology is scalar, the sense in which the contributing factors relevant to our ability to fulfil our obligations, obey the moral law, do so to a greater or lesser degree.

The contributing factors relevant to our ability to fulfil our obligation to ourselves contribute to a greater or lesser degree when compared to their alternatives. For example, if I am at a store and deciding whether or not to rob the owner my past interactions with storekeepers would contribute to my ability to make the right choice (in this case, not steal anything and leave peacefully) in proportion to the degree that they help me make the right choice now. To explain further, if I had failed to do the right thing in an earlier decision by stealing from a local store it would contribute more to my ability to do the right thing at the current moment than if I had done something worse during my earlier attempt, such as harming the shopkeeper as well as stealing their property. My point is that the degree of our failures and successes at self unification can contribute to my ability to unify in the future to the extent that past decisions become a part of the forces in play when I am undertaking the process of reflective deliberation and using my faculty of reason to make a decision. An alternative example might help here: when I am deciding what to do one of the ways I might represent what I am trying to do is by asking myself what decision would make me into the type of person I ought to be (which I might phrase as 'what would make me into who I aspire to be?' or, perhaps, 'what would Spock(Piccard/Jesus/etc.) do?').

This manner might, on the face of it, appear unKantian in the sense that it does not appear to describe the reflective process as an appeal to the categorical imperative. However, the process of deciding what to do by deciding what type of person one ought to be is faithful to the Kantian tradition because it is a way of describing the pursuit of self constitution as the construction of the self into the type of person one ought to be. The idea is that, when I ask myself what decision will make me into the type of person I ought to be, I am appealing to the notion that there is an array of options before me regarding who I might be and that I have control over which of them I become. That is to say, I am identifying that there are many ways in which I might constitute myself, as I make the decision before me, and some are better than others.

Assuming that Kantian constitutivism, broadly speaking, correctly explains the nature of normativity, then some are better than others in the sense that they are more conducive of coherent self constitution (to use Korsgaard's terminology) or more conducive of making one intelligible to oneself (to use Velleman's terminology). This is a scalar notion to the extent that we can understand that some of these options, the options of who I might become, are more or less helpful than others to my pursuit of the aim of self constitution (making myself coherent or intelligible). My point is that, while there is a sense in which some of the decisions will be coherent (intelligible) and the others not, from the position of the subject engaged in making the decision, it does make sense to describe the options before the subject as being more or less helpful to the aim they are pursuing (the ongoing aim of self constitution). So, when Korsgaard defends the existence of freedom, as well as morality (the moral law), in the context of a subject in the position of exercising that freedom she is deriving the existence of freedom from the same context in which one can view the various options they face as being more or less helpful in their pursuit for the aim of their freedom (that is, the aim of their agency - self constitution).

The relationship between how Korsgaard establishes that freedom exists and the nature of agency justifies my claim that self constitution is scalar because it is scalar in the same context in which freedom exists. To develop this claim I need to explore how Korsgaard explains the nature of agency in order to identify why the connection between the existence of freedom and the source of normativity entails understanding self constitution in the context of the subject making a decision (that is, undertaking the activity of agency - exercising their freedom to constitute themselves). Before I undertake this further development, I need to explain the relationship between the *structure* of our minds, the necessary structure Korsgaard appeals to in order to explain the nature of freedom and agency, and the examples I have just used to demonstrate that the decisions we face are scalar. Korsgaard's point is that our minds are *necessarily* reflective, what she means is that we must have the ability to reflect in order to be thinking at all. At least, we must have this ability in order to be thinking in the sense that an agent thinks. I intend to invoke the same type of necessity in the examples I have just provided. My point is that these examples relate to necessary elements of the self.

This is a development of the point made by Kant (1781/1787/1996) who argues that the prefix "I think" must be attachable to all thoughts, even those pertaining to necessary claims (B132). Kant's point, and Korsgaard's too, is that even when claims pertain to necessities the subject still plays a role in their presentation. When regarding necessary claims, such as the nature of reason or the essential elements of the subject, the self still plays a role by providing the context in which the necessary elements were presented. The idea is that because the subject is necessary for there to be thoughts at all, the necessity of those elements of the subject that are themselves necessary to present them as such (as necessary) is established. So, it is necessary for a thinking subject (an agent, or whatever term used to denote a being with an abstract understanding of the universe) to be reflective because being reflective is necessary to understand those elements of thought (reason and so on) that are themselves necessary.

One might point out that it appears as though I have identified contingent matters of psychology in the examples I provided of subjects regarding the decisions they face in a scalar manner. In my example of the subject deciding whether to rob a store or leave peacefully I claimed that past decisions (past interactions with himself) can provide a scalar contribution to his ability to make the right decision in the current instance. In the other example, where one is deciding what type of person they want to be and matching that to the decision they want to make, I claimed that they can regard decisions as being more or less conducive to developing them into the type of person they aim to be. In both of these cases it appears that I am making a psychological claim about how these decisions will affect the actions and conception of the self (self-concept) for the individual in question. If this were true then my examples would not reveal anything about what Korsgaard is deriving freedom from, because she is deriving freedom from necessary rather than contingent elements of subjects, I would instead have provided examples that relate to empirical psychology rather than the nature of reason and normativity. So, I need to clarify that my point is not that such manner of self conception will *in fact* provide the subject with aid (to a greater or lesser extent) towards their aim (of self constitution). What impact our past or current behaviour has on our own understanding of ourselves and the actions we take now and in the future is a matter of psychology. Rather, my point is that the position of the subject when they make a decision entails that they can understand the choices they face as being more or less helpful towards the aim of their reflective process (self constitution).

The idea is that it makes sense to understand the choices you face when making a decision (when exercising your freedom) as more or less helpful to the aim you are in pursuit of during the decision making process. Strictly, it makes sense to understand them this way *from the position of the subject* and *in the context of exercising their freedom*. Whether the decision *actually* resulted in the individual acting in a particular way is something that may in principle be measurable externally, either after the fact or perhaps in real time via external observation of brain states, and is a contingent matter of psychology. The necessary part, the point that establishes scalar deontology and Korsgaard's constitutivism, is how these choices are understood from the position of the subject as they undertake the task of self reflection. From that position, the position *of the subject*, the choices faced during the decision making process can be understood as having a scalar value in relation to the aim of their decision making process for *the same reason that freedom exists from that position* - the subject must understand them in this manner. That is, the subject must understand themselves as being in control of the choice they make (free) and must regard the choices they face as valuable in proportion to the extent to which they aid the aim of their reflection. I should clarify that the subject must understand themselves in this manner if they are to understand themselves coherently - many of us, in practice, do not understand ourselves and our freedom in this manner.

Deontology is scalar because the same context that Korsgaard establishes that freedom exists within, the position of the subject making a decision, is one which allows the subject to value the choices they make as more or less helpful in their pursuit of their ongoing aim of self constitution. Given that the relationship between Korsgaard's constitutivism and scalar

deontology is at this foundational level, the level at which the existence of freedom and agency is established, one might wonder why scalar deontology is not already present in her theory. In a limited sense it already is, in the sense that the foundations of scalar deontology are utilised by Korsgaard to establish the nature of agency and the existence of freedom; this is why they are compatible and will be explored further after I explain why Korsgaard's constitutivism as she presents it is not scalar. Korsgaard does not establish a scalar theory because of how she establishes the necessity of morality from the existence of freedom. Korsgaard derives the necessity of morality in the form of moral laws that demand coherence and then identifies one's moral obligation as the adherence to those laws. This is not a scalar moral theory because one is either adhering to the moral law or not.

Korsgaard derives the moral laws from the nature of freedom by arguing that because freedom is self-determination it must have a law-giving nature. She argues this by explaining that the nature of reason is to undertake the process of reflection (deciding what to do) by constructing laws that govern the decisions we make. Her point is that: "Reason means reflective success. So if I decide that my desire is a reason to act, I must decide that on reflection I endorse that desire." (Korsgaard, 1996b, p. 97). The nature of reason, as the control we have over our own actions, poses a problem because it is not clear how we achieve reflective success; that is to say, if she claims reason means success at the process of deciding what to do (reflection) then she is required to explain what the success criteria for that process are. Korsgaard (1996b) solves this problem by explaining that it is the nature of the freedom itself that solves this problem; her argument is that freedom is the control of one's own decision and that control takes the form of prescribing rules:

Kant ... described this problem in terms of freedom. He defines a free will as a rational causality which is effective without being determined by any alien cause. Anything outside of the will counts as an alien cause, including the desires and inclinations of the person. The free will must be entirely self-determining. Yet, because the will is a causality, it must act according to some law or other. Kant says: 'Since the concept of a causality entails that of laws . . . it follows that freedom is by no means lawless . . .'⁶⁹ Alternatively, we may say that since the will is practical reason, it cannot be conceived as acting and choosing for no reason. Since reasons are derived from principles, the free will must have a principle. But because the will is free, no law or principle can be imposed on it from outside. Kant concludes that the will must be autonomous: that is, it must have its *own* law or principle. (pp. 97-98)

Korsgaard's point is that our autonomy, freedom, is control over our own decisions and that this control is exercised by prescribing the laws that we follow. Prescribing the laws that we follow is accomplished reflecting on the choices before us and determining which we should endorse based on the relevant reasons - that is the process of law making, the activity of the will. This is how she establishes, utilising Kant's argument, that morality takes the form of the moral law; that is, morality is based on laws because that is the nature of freedom.

⁶⁹ Korsgaard is citing "The Groundwork of the Metaphysics of Morals" 4:447.

With the nature of freedom established, as the control over one's actions via the authorship of the laws we endorse through the process of reflection, Korsgaard still needs to justify and explain the particular set of rules that make up morality as such. Her argument that freedom takes the form of prescribing our own laws does not entail a *particular* set of laws and it does not establish the necessity of any of the laws that we might prescribe. Korsgaard's aim is to establish objective moral laws and to accomplish this she must establish not just that morality takes the form of laws but also that there is a particular set of laws that are the success criteria for the process of law creation. The solution to this problem is to establish that the correct laws for any given subject to construct is the categorical imperative. Kant puts forward this argument by explaining that the nature of our lawmaking faculty obligates us to prescribe laws that are categorical (1785/2011 4:447-448).⁷⁰ The idea is that controlling one's actions via the construction of laws is only accomplished when those laws are coherent. Attempting to prescribe laws that are not coherent is failing to prescribe laws at all (they are, due to their incoherence, not laws of reason); hence, the success criterion for being free, controlling your choice by authoring your own laws, is to prescribe coherent laws. By coherent laws, I mean laws that are consistent with the project of self constitution (so, laws that will, when legislated, coherently constitute the subject legislating them). This entails the categorical imperative because that is what the categorical imperatives are - the laws it is coherent to prescribe. The connection between coherence and the categorical imperative is easiest to explain in relation to the formulation of the categorical imperative as the universalizability of the laws you prescribe. This is the formula of universal law as presented by Kant (1785/2011):

[T]he *principle* of every human will as *a will giving universal law through all its maxims*, provided it is otherwise correct, would be very *well suited* to be the categorical imperative by this: that just because of the idea of giving universal law *it is based on no interest* and therefore, among all possible imperatives, can alone be *unconditional*; or still better, by converting the proposition, if there is a categorical imperative (i.e., a law for every will of a rational being) it can only command that everything be done from the maxim of one's will as a will that could at the same time have as its object itself as giving universal law; for only then is the practical principle, and the imperative that the will obeys, unconditional, since it can have no interest as its basis. (4:432)

Kant's point is that authoring laws to control our choices requires that those laws are coherent and in order for those laws to be coherent they have to be consistent with the laws we would have others author for themselves. In short, given that there is no relevant difference between myself and others, broadly speaking, I must author those laws I would also endorse for others to follow, because to not do so would be incoherent. I must treat others in the same manner I treat myself, because they are the same as me in the relevant sense, and that means controlling myself in the same manner I would have them control themselves.

Korsgaard develops Kant's argument further when establishing normativity in her constitutivist theory. She argues that the subject is obligated (duty bound) to the categorical imperative when

⁷⁰ Korsgaard provides an explanation of Kant's argument that morality and freedom are one and the same in "Creating the Kingdom of Ends" (1996a) p. 162-167.

they regard themselves as a member of the kingdom of ends (1996b, pp. 98-102). What Korsgaard means is that the demand for coherence in the laws we prescribe becomes the moral law. It becomes the categorical imperative in the sense intended by Kant when we acknowledge that I am in a particular relation to other moral agents. This is a development of the notion underlying Kant's claims that coherence demands that we legislate universalizable laws because it is not coherent to treat others differently than we treat ourselves. Korsgaard (1996b) considers this a development, rather than a clarification, of Kant's theory because it does not follow that we must endorse others in the same manner we endorse ourselves until it is established that we have the right type of relation to others (p. 99). So, according to Korsgaard, we must acknowledge that coherence demands we treat ourselves as, in some sense, constructing a society (the kingdom of ends) with others before we are obligated, merely on the grounds of coherence, to regard them in the same manner we regard ourselves. This can be established, Korsgaard argues, by pointing out that we *must* endorse ourselves by identifying the same element of ourselves that is possessed by others - as beings that decide what to do by reflecting on their actions, as moral agents (pp. 101-102). Her argument is that when we undertake the process of reflecting, choosing what choice to endorse, we are undertaking the process of being a moral agent and acknowledging this entails acknowledging that we are the same as other beings that undertake this process. Acknowledging that this is what I am when undertaking the process of reflecting puts me in a relation with other beings that also undertake this process, in the sense that coherence demands I regard them in the same manner as I regard myself. That is to say, when I endorse myself on the grounds of my autonomy I obligate myself to endorse the autonomy of others.

This is how Korsgaard's Kantian constitutivism develops a theory of agency that entails scalar deontology. She argues that it is because of the relationship we have with ourselves, the manner in which we endorse our own autonomy and because of the nature of freedom, that we are obligated to adhere to the categorical imperative. Freedom *is* adhering to the categorical imperative, because to be free is to control yourself by reflectively endorsing your choices according to laws you prescribe, and the process of prescribing those laws is pursued by obeying the demand for coherence that is placed upon you by the same faculty of reason that enables you to reflect on the decisions you make. This is a relationship with yourself because it requires acknowledging your law-giving nature, your freedom (moral agency), to engage in the process. This leads Korsgaard (2009a) to describe agency as a relation to oneself, in the sense that you are engaged in the ongoing constitution of oneself:

[R]espect for humanity is a necessary condition of effective action. It enables you to legislate a law under which you can be genuinely unified, and it is only to the extent that you are genuinely unified that your movements can be attributable to you, rather than to forces working in you or on you, and so can be actions. So the moral law is the law of the unified constitution, the law of the person who really can be said to legislate for himself because he is the person who really has a self. It is the law of successful self-constitution. ... It is simply that every person interacts with others as he interacts with himself, and in this the good person is no different. A person who cannot keep a promise to himself cannot keep a promise to another. A person who is prepared to sell

himself for a little money is prepared to sell others as well. A servile person lacks respect for his own rights and so for the rights of others. Inward and outward justice go together. (p. 206, see also pp. 131, 202-203)

Korsgaard's point is that the purpose of reflection, the process of utilising your faculty of reason to make a decision, is to constitute yourself coherently (unify yourself). This is the relationship between freedom, agency, self constitution, and normativity.

The idea, Korsgaard's constitutivism, is that freedom *is* constituting yourself properly (constituting yourself coherently - unifying oneself) because it is by constituting yourself that you enact your freedom. In this sense your freedom is your ability to constitute yourself, to unify yourself and become coherent, and this informs the nature of what it is to be an agent. Her point is that agency needs to be understood in the context of the practical standpoint: agency means understanding ourselves as active beings in control of our actions. Korsgaard (1996a) explains that understanding ourselves as agents means understanding ourselves in the context of exercising our control over our own decisions (our freedom):

As thinkers and choosers we must regard ourselves as active beings, even though we cannot *experience* ourselves as active beings, and so we place ourselves among the noumena⁷¹, necessarily, whenever we think and act. According to this interpretation, the laws of the phenomenal world are laws that describe and explain our behavior. But the laws of the noumenal world are laws which are *addressed to us* as active beings; their business is not to describe and explain at all, but to govern what we do. (p. 204)

Her point is that when we regard ourselves as free (at least, when we do so accurately) we do so in a particular sense and that is by explaining the position a subject is in when making a decision. The notion underlying this claim, which is crucial to Korsgaard's conception of agency as something understood from the position of the subject in the activity of exercising their autonomy, is that explaining a subject's behaviour (what they did and why they did it) is distinct from explaining the activity of making a decision.

There is, according to Kant and Korsgaard, one sense in which we can understand a person's behaviour as something that can be explained and described according to the observed phenomena. This is the sense in which we might offer a psychological or sociological explanation of why someone acted in a particular way. This is not the sense in which freedom can be understood and not the context in which agency exists. There is a different sense in which a person's decision can be judged (in a moral sense, as the autonomous action of an agent) and that is the sense in which an agent's freedom can be understood. This second sense

⁷¹ In this context noumena means things that cannot be understood within the restrictions of our senses and the particular presentation of the world that is our experience of it (that is, our phenomena). Kant (1781/1787/1996) uses the term noumena to describe those objects that cannot be understood with reference to what our senses present to us (our sense data) and are instead understood as things that exist independently of sense data (A236-260, B295-315). The point is that noumenal objects are understood in a particular way and, that is, not with reference to the phenomena (sense data or experience) related to them or any other potential phenomena. Noumena must be understood without reference to any particular or potential phenomena because noumena means things as they are independently from phenomena.

is the person's position as a subject actively involved in the process of making a decision, of exercising their freedom. Korsgaard (1996a) explains that these two senses are both required to explain the world and our relationship with it:

The two worlds, or the two views of the world we get from the two standpoints, may seem strangely incongruent, but it is important to see that there is no contradiction. The incongruity simply follows from the fact that we stand in two very different relations to our actions: we must try to understand them, but we must also decide which ones to do. (p. 205)

Korsgaard's point is that our control over our actions exists in the standpoint within which we can understand freedom and that is the position of the subject that is making a decision.

Korsgaard (1996a) argues that when understanding the actions of people we are required to understand and explain the world in a manner that requires using both of these standpoints (pp. 206-212). We must use both of these standpoints, explains Korsgaard, because accurate judgement of others requires both understanding the situation they are in (that is, their psychological state) and the manner in which they exercised their control over themselves. In this sense we must simultaneously understand that the people we judge could have acted no differently, because they acted in accordance with their psychology, and were in control of their actions, at least insofar as they made the decisions that led to their actions. This is also, argues Korsgaard (in the form of an interpretation of Kant), why we hold ourselves responsible even if we acknowledge that we could not have done otherwise: "[w]hen we enter into relations of reciprocity, and hold one another responsible, we enter together into the standpoint of practical reason" (p. 212). The point is that understanding someone's behaviour requires understanding *both* their psychology and their control - both standpoints are required. My point, in agreement with Korsgaard, is that this is not just the position of the subject undertaking the activity of making a decision that provides the context within which we can understand freedom, it is also the position that provides the context within which we can understand normativity.

With Korsgaard's explanation of the existence of freedom and its relationship with agency established, I am able to explain how her constitutivism is compatible with my argument for scalar deontology. It is compatible because she derives normativity from the same place that scalar deontology can be derived: the standpoint from which we are able to understand freedom. The context in which we can understand normativity, according to Korsgaard's constitutivism, is derived from our autonomy and that, in turn, is derived from our control over ourselves, our freedom. The activity of self constitution and the activity of controlling oneself are the same thing in the sense that self constitution is the *aim* of your control. This is the same relationship between self constitution, freedom, and scalar deontology. Scalar deontology is the appreciation of the aim of your control from the perspective of exercising that control. This is why scalar deontology and Kantian constitutivism are fundamentally intertwined: scalar deontology is derived from how you understand your own control of your actions (your own freedom).

The categorical imperative can be explained in multiple different ways in the same manner that, as Korsgaard explains, our behaviour can be explained from different standpoints. When examining our obligation to adhere to the categorical imperative in the context of a specific decision we can do so by appealing to the formulations of the categorical imperative presented by Kant, such as the formula of universal law, and when doing so we are able to derive our obligation in the context of that decision. This type of presentation of the categorical imperative does not, and cannot, tell the full story of our obligation to ourselves because the context of a particular decision abstracted in this manner is not the context in which our obligation exists. Our obligation to ourselves exists in the same context we can understand our control over our own actions (our freedom). This context is the position of a subject exercising their rational faculties which, remember, is where our obligation is derived from. Our obligation needs to be understood in the context of a subject exercising their rational faculties because this is the context in which its foundations must be understood. My point is that self constitution, the aim of our control, is a formulation of the categorical imperative because it is an explanation of the aim of your freedom: self constitution is an explanation of what you ought to do. Furthermore, the context in which self constitution and our freedom (our autonomy and the aim of it) exists, and can be understood, is necessary for a full understanding of the categorical imperative for the same reason that it is necessary to understand our control over our actions. So, normativity is derived from our control over our own actions and, for that reason, the categorical imperative must be understood in the same context that our control requires: our control over ourselves is, after all, the reason we are obligated to adhere to the categorical imperative and that obligation exists in the context of the existence of that control.

I will develop my argument for scalar deontology from self constitution as a formulation of the categorical imperative to scalar deontology in § 3.9 after establishing that Velleman's Kantian constitutivism is also compatible with my argument. In summary, Korsgaard's constitutivism is compatible with my argument for scalar deontology because it derives normativity from her conception of agency, freedom, and autonomy. This conception of agency, freedom, and autonomy explains that they must be understood in the context of the position of a subject making a decision; that is to say, freedom exists in the activity of agency (exercising our autonomy). This is the same position that I am deriving scalar deontology from. My point is that when Korsgaard derives normativity from the activity of agency she posits a theory which is compatible with my argument that from the standpoint of agency (the position of a subject making a decision) our obligation is scalar. These two arguments are compatible because they are both deriving normativity (or aspects of the nature of normativity) from the same source. Korsgaard's source of normativity, the source of our obligation to constitute ourselves coherently, is also the source of scalar deontology.

3.8 Velleman on our obligation to ourselves and the source of its authority

Velleman's Kantian constitutivism entails scalar deontology because he derives normativity from our engagement in the process of making ourselves intelligible to ourselves. The significance of this process is explained by Velleman's argument that our engagement in this process makes the answer to normative questions objective within our own frame of reference. Velleman argues that normativity is objective despite also positing a relativist foundation for morality. The reason for this apparent dichotomy is related to the reason his constitutivism is compatible with scalar deontology. Velleman argues that objectivity is relative to the frame of reference of normativity and that normativity is objective because it is an inescapable part of the particular frame of reference we, as particular types of subjects, occupy. My argument for scalar deontology is that the scalar element of deontology follows from the same element of our nature, and therefore our frame of reference, that Velleman derives the objectivity of normativity from.

Velleman, like Korsgaard, relates the source of normativity, and the foundations of his theory, to the nature of freedom as it relates to the nature of our agency. Velleman (2000) argues in *The Possibility of Practical Reason* that we are free in an epistemic sense. His point is that we are free, in a sense, from determinism when making particular knowledge claims (pp. 32-44). Velleman (2000, p. 33) is arguing in support of an explanation of free will first made by David Hume (1738/2007) in *A Treatise of Human Nature* where Hume explains that in the process of reflecting upon our actions (deciding what to do) we are aware of a type of looseness in passing from one mental state to another (2.3.2.2, p. 262). What Hume means is that the forces governing our mental processes, the empirically tractable principles of association that are fundamentally similar to the causal forces governing nature, do not appear to match the phenomena (the experience) of making decisions. Being in the position of a subject means that "[w]e feel that our actions are subject to our will on most occasions, and imagine we feel that the will itself is subject to nothing" (Hume, 1739, 2.3.2.2, p. 262). Like Korsgaard, and Kant, the point is that freedom, insofar as it exists, is understood in the position of the subject. Velleman develops this point, further than Hume does, into an argument that freedom is something that exists as a type of knowledge (that is, a way of understanding the world).

Epistemic freedom, argues Velleman, is the point at which the "conceptual problem of freedom ... becomes intertwined with the phenomenological problem" of freedom (2000, p. 33). The phenomenological problem of freedom is that the experience we have of being free appears to be incompatible with the deterministic nature of our psychology. The conceptual problem of freedom is that our deterministic psychology appears to be incompatible with moral responsibility: if we cannot have acted other than we did act, because our actions are determined by the preceding events, then it appears unjust (or, at least, unfair) to hold us responsible for not acting other than we did because being blamed for failure to act differently is being blamed for not doing the impossible. Velleman attempts to solve these problems at the same time by arguing that the process of making our actions our own, in a moral sense, both explains why the phenomena of freedom exists and why we are responsible (in a moral sense) for (at least some of) our choices.

The process of making choices our own, argues Velleman, is practical reasoning. Practical reason is essential to making choices *our* choices because it explains the process of reasoning that we undertake to become responsible for them, as Velleman (2009) explains:

I believe that the process of improvisational self-enactment constitutes practical reasoning, the process of choosing an action on the basis of reasons. Why do I think that the self-enactor chooses his action? Because it is his idea, which he puts into action in preference to other ideas that he might have enacted, if this one hadn't made more sense. Why do I think that he chooses for reasons? Because he chooses his action in light of a *rationale* for it, which consists in considerations in light of which the action makes sense. (p. 18).

The point is that this process, practical reason, is understood in a particular context and that context is the position of a subject undertaking the activity of making a choice. Velleman's point is that the role of the self in the process of practical reason is crucial for understanding the nature of that process.

Notice that this is the same point that allows Korsgaard to develop her theory of freedom by arguing that it exists from the position of the subject who is in the activity of making a decision and must be understood in that context. Korsgaard derives both normativity and freedom from this point, the role and perspective of the subject, which is what makes her theory compatible with scalar deontology. Velleman's constitutivism is compatible with scalar deontology for the same reason: normativity is derived from the position of the subject making a decision; the role of practical reason requires that normativity be understood by contextualising crucial claims about the nature of normativity from the position of a subject who is making a decision. It is this context that allows us to understand our obligation to our own constitution, our duty, as something we are fulfilling to a greater or lesser extent in our ongoing project of self constitution (that is, as scalar).

Despite this similarity, there is an important difference between how Korsgaard and Velleman utilise this claim. Korsgaard is providing a transcendental argument which utilises the necessity of the position of the subject, for any knowledge to exist at all, to establish the necessity of the normativity she is deriving from the nature of that position. In this manner Korsgaard is pursuing a Kantian strategy of establishing the objectivity of her claim, the objectivity of normativity, by establishing the necessity of the claim. In the § 1.6 I provide a Kantian reply to the shmagency problem that is compatible with core tenets of Velleman's theory and, in doing so, demonstrate that core elements of Velleman's theory are compatible with the type of Kantian strategy Korsgaard pursues to provide the foundations for Kantian constitutivism: if such an alteration to Velleman's theory is made, his constitutivism is compatible with scalar deontology for the same reason that Korsgaard's is. However, Velleman's theory, as such, does not provide a transcendental argument in the same sense as Korsgaard, which means that establishing that Velleman derives normativity from the same place that I derive scalar deontology from is not sufficient to establish their compatibility. Velleman is not utilising the necessity of the position of

the subject in the same sense as Korsgaard and Kant, but he is using the position of the subject in a manner that remains compatible with scalar deontology.

Velleman, like Korsgaard and Kant, argues that the objectivity of normativity is derived from necessary elements of the position of the subject. However, unlike Korsgaard and Kant, Velleman (2013) argues, in *Foundations for Moral Relativism*, that the objectivity of moral norms is relative to particular frames of reference (pp. 47-53). What he means is that norms are objective within the frame of reference of what makes that norm true; so, within the particular context (say, a particular society) that makes a specific norm true that norm is objectively true. He attempts to establish this by arguing that the reasons that support norms must be understood in the context of the subject and the particular frame of reference they are in because it is this context that makes them reasons at all (that is, that makes them provide support for taking one action over another).

This argument, that reasons support norms in the context of a particular frame of reference, is informed by his theory of epistemic freedom which posits that we can understand a subject as free to do one thing or another (rather than being determined to do one thing over another) when we understand them as a subject who is in the position of making a decision. This is the same approach to establishing the existence of freedom that Korsgaard takes insofar as it rests on the claim that freedom is understood within the context of the position of practical reason (that is, the position of a subject who is making a decision). Velleman (2000) argues that the nature of knowledge is affected by occupying the position of a subject that is making a decision and that this entails peculiar things for what it means to know something or to claim that something is true:

Epistemic freedom is the freedom to affirm any one of several incompatible propositions without risk of being wrong. We sometimes have this freedom, strange as it seems, and our having it sheds some light on the topic of free will and determinism. (p. 32)

Velleman's point is that knowledge itself, the nature of what makes a claim true or objective, takes on a particular quality in the context of a subject who is making a decision and that this particular quality enables us to understand the nature of free will.

The special nature of knowledge in the context of a subject making a decision, that Velleman is referring to, is the same point that Korsgaard makes when she argues that freedom exists in this context, in particular, and must be understood in that context. The idea is that we can make a peculiar type of claim in this context, that is, in the context of the position of a subject making a decision, which simultaneously appears obviously true and, just as obviously, impossible. This claim takes the form of claiming that oneself, or another subject in the relevant context, could do either one thing or another. There is a sense in which this is a false claim, because it is not true that I could do either one thing or another. It is true, in such cases, that I am *deciding* what to do and that my decision is between one option or another. However, it does not follow from my being in the position of making this decision that it is true that I could do either one thing or the other: I can only make the decision that my phenomenon combined with the preceding events dictates. It appears that any claim made of the form 'I can decide one way or the other' is

incorrect in the sense that I can only decide the way that the relevant factors determine. Velleman argues that such claims are not incorrect because, even granting that it is true that I can only decide the way that the relevant factors determine, from *the position of the subject in particular* such claims are true because they accurately describe the situation the subject is in. They accurately describe the situation that the subject is in by accurately describing what it means to be a subject that is deciding what to do.

It is because we can make such claims that we are, as Velleman describes, epistemically free. The idea is that, when understood in the specific context of a subject undertaking the activity of making a decision, it *is* true that the subject in question can either do one thing or another. Velleman (2000) describes freedom as the sense in which it is true from the perspective of the subject that they can do one thing or another and explains this by comparing freedom to the phenomena of colour:

[I]f my explanation for the phenomena of freedom is correct, then metaphysical freedom is like a secondary quality, such as color. And in that case, compatibilism can take its cue from a projectivist account of secondary qualities, an account that interprets ascriptions of those qualities as systematically false and yet instrumentally justifiable. (p. 53)

Velleman's claim is that freedom is not about our ability to make a decision that, in some manner, defies a deterministic understanding of the universe. His claim is that freedom describes an aspect of being in the position of making a decision - that is, the decision of a subject using practical reason.

The idea is that freedom is like colour, it is true to claim that it exists but only in the same sense that it can be true for me to claim that I am seeing the colour red. Velleman's (2000) argument is that freedom describes part of the nature of what it is to be in the position of a subject:

I believe that metaphysical freedom is a secondary property in the same sense [as the phenomena of seeing colour]. It's a property that we experience as being in the world, but only because we project it onto the world, by projecting a property of our predictions onto the actions predicted, thereby mistaking epistemic [freedom] for metaphysical freedom. (p. 53)

It is important to notice that Velleman's point is that we *do* have freedom *despite not having the metaphysical freedom we might be tempted to ascribe to ourselves*.

One might be tempted to think that Velleman is merely pointing out that freedom is an illusion resulting from our perception of the world, and his point is closely related to this type of claim which makes this a tempting mistake to make. Velleman's (2000) theory of epistemic freedom does claim that our experience of freedom is projected into the world, by our process of experiencing it, but this does not entail that it is merely an illusion and nothing more:

The metaphysical freedom that we consequently experience our actions as having [because of our projection of freedom into the world], I want to say, is the property that we ascribe to those actions when we call them free. Hence our ascriptions of freedom,

like our ascriptions of color, are systematically false: no action has the property that it is felt to have when it feels free or that it is said to have when it is called free. (p. 53).

The point is that freedom accurately describes the world when we use it in the context of describing the position of the subject exercising that freedom. In that sense, accurately describing the world in that context, it is true that there is freedom. Like Korsgaard, and Kant, the claim is about the context and sense in which freedom exists. It exists and must be understood in the particular context in which it exists, but that does not make it merely an illusion in the sense that it cannot truthfully and accurately describe something (in this case, the nature of decision making as an agent exercising practical reason).

Velleman's theory of epistemic freedom depends on the argument that freedom truthfully describes the use of practical reason in the same sense that colour truthfully describes perceiving the world. There is a sense in which neither, colour or freedom, accurately describes the world as it exists but there is also a sense in which claims about either can be true.⁷² That is to say, it is true that I can make either one decision or another in the same sense that it is true that I can see that leaves on a tree are green. So, epistemic freedom is the freedom to describe the world, in a particular context, according to how practical reason works. Velleman is describing the same point as Korsgaard, that freedom needs to be understood in the context of the position of the subject using it, but he describes it in terms of the nature of particular knowledge claims while Korsgaard describes it in terms of existence.

Although their approaches to freedom are similar, there is a crucial difference between the foundations of Velleman and Korsgaard's constitutivist theories. For Velleman this freedom can be, in relevant senses, different from one person to another. While Korsgaard argues that there are necessary elements to our faculty of reason, from which she derives our obligations to ourselves and therefore normativity, Velleman argues that those necessary elements are necessary *from the perspective of the subject that has those elements*. This is what leads Velleman to endorse both relativism and objectivity. I think this, apparently contradictory, use of terminology is the result of Velleman's disagreement with Enoch on the nature of normativity. Velleman (2009) explains, in response to Enoch's shmagency problem as discussed in §§ 1.4 and 1.5, that his theory of normativity establishes objectivity in a particular sense:

Asking whether agency rather than *shmagency* is objectively correct would be like asking whether a telephone is correct rather than a tree. Agency or *shmagency* can be objectively correct as the solution to a determinate problem, or as the answer to a determinate question; but then the problem or question will invoke the criterion implicit in agency or the criterion implicit in *shmagency* (or some third criterion), by which one or the other can qualify as a correct solution or answer. The idea that there must be a correct criterion to invoke, and that its correctness must be objective in a sense that

⁷² I appreciate the difficulty in describing things 'as they exist', given the role of the noumena in Kant's description of freedom. In this context I think it is a helpful method of describing Velleman's point, given how he phrases it. To clarify, by things 'as they exist' I mean the same point made by Korsgaard, that freedom can only be accurately understood when contextualised in the position of the subject that is exercising it.

invokes no criterion whatsoever - *that* idea is nonsense, like the idea of objective correctness in a telephone or tree. (p. 145)

Velleman's point is that objectivity, as such, is relative to the scope of the question. He applies this to normativity by arguing that it is our nature that makes particular norms, and the normative claims that result from them, true.

The idea, according to Velleman (2009) is that questions, including normative questions, come packaged with crucial elements of their answer:

A question must establish criteria for what can count as a correct answer; if it fails to establish criteria for an answer, then it is not a fully constituted question. If "Why be an agent?" isn't about a choice or a *shmoice* or any third thing for which there is a criterion of correctness, then you aren't owed an answer, because you haven't yet asked a question.⁷³ (p. 144)

Velleman's argument is that questions, if they are legitimate questions in the sense that they make sense (are "fully constituted"), provide the criteria for a correct answer. Providing the criteria for the correct answer means that the question itself only warrants an answer when understood in a particular frame of reference. The idea is that questions are asked within particular contexts that provide the criterion for the correct answer to that question.

In Kantian terms, and in contrast to Korsgaard's constitutivism, Velleman's argument is dismissing the possibility of the categorical imperative, in the sense that he is dismissing the possibility of a *necessary* imperative that always applies. His argument is that there are imperatives that arise *in particular contexts*, but that they are always relative in the sense that those contexts are not necessary. Velleman (2009) describes this approach as a "Kinda Kantian strategy" (p. 149) and the same claim underlies his argument for moral relativism (2013, pp. 47-53). He is not attempting to establish objective norms in the sense that the norms are universally necessary, however this does not mean that Velleman (2009) is not trying to establish that there are answers to normative questions in a particular sense:

In the modesty of its ambitions, this [Kinda Kantian] strategy resembles the philosophy of science.⁷⁴ Philosophers of science do not aspire to show that anyone seeking the truth empirically, by reasoning from observed phenomena, must inevitably arrive at Newton's laws of motion; rather, they show how the exigencies of theorizing about the phenomena favored adoption of Newton's theory - how theoretical reasoning about the actual world turned out to be pro-Newtonian. Just as reasoning in pursuit of the truth has been

⁷³ Velleman's example might appear odd if you are not familiar with the shmagency problem, which is explained in the context of Velleman's constitutivism §§ 1.1, 1.4, and 1.8. The point of Velleman's example is that questions that don't contain, in the way the question is formed, the context of the answer are flawed. For example, asking how much someone weighs is not a properly formed question unless it contains the (explicit or implicit) context in which they are to be weighed. So, merely asking 'how much do you weigh, objectively speaking and in no context in particular' is not a properly formed question and does not warrant an answer while asking 'how much do you weigh, in kilograms on the planet earth' is a properly formed question because it includes the frame of reference (that is, it includes a sufficient description of what an answer will look like - a measurement of kilograms on earth).

⁷⁴ Velleman's Kinda Kantian strategy.

pro-Newtonian when applied to the phenomena of this world, I believe, so reasoning in pursuit of self-understanding has been pro-moral when applied to the human condition. In other words, practical reasoning has favored morality without requiring or guaranteeing it. (p. 149)

Restated in Kantian terms Velleman's argument becomes: the imperatives, norms, are hypothetical, rather than categorical, in the sense that they arise from contexts (frames of reference) that are contingent (rather than necessary). The idea is that normative questions are only properly constituted, and therefore questions that warrant an answer, when understood in a specific context that is provided by the question itself and so normative questions are, necessarily, relative to the context that they provide.⁷⁵

This relativism is why Velleman's theory required an alternative solution to the shmagency problem, which I provide in § 1.6, in order to provide a Kantian reply to Enoch. Velleman is not attempting to establish the objectivity of normativity, at least not in the Kantian sense of objectivity (or, to clarify in the context of my argument in § 1.6, in Enoch's robust realist sense of objectivity). Velleman is attempting to establish the objectivity of answers in the relevant frame of reference. This is why Velleman puts forward both an argument for relativism yet also argues that the answers to normative questions can be objective: the answers to normative questions, according to Velleman, can be objective *in the particular context in which they are asked*. This context is the same context that the normative questions themselves provide (at least, when such questions are properly constituted and so worth answering). Notice that this does not preclude the necessity of the answer, at least in the sense that it can be necessary *within the relevant context*. So, I could ask a normative question about what I ought to do in the context of being a particular type of subject (perhaps, as Velleman discusses (2013) p. 47-53, including a particular culture or society) and the answer to that question might be necessary in the sense that *given what makes me this type of subject* a particular prescription must be given. This is not a Kantian argument to the fullest extent, like the argument Korsgaard provides, because it does not derive the answer from a necessary element of the subject (that is, something that the subject *must* be if it is to be a subject at all). The norm, the answer to the normative question, can be necessary in the sense that it is required for the type of subject in question but this does not entail anything about whether the type of subject in question is itself necessary.

Normative questions, according to Velleman, provide our nature as the frame of reference. So, when I am asking about what I should do, I am asking what *a particular type of subject*, such as I am, ought to do. Given that the scope of the question, if the question is to be properly constructed, provides the type of subject that I am as the criteria for the correct answer, I can discern the answer, in part, by deriving norms from my own constitution. So, people such as

⁷⁵ It might be fair to read Velleman as arguing that *all* questions of *all* types are relative in this manner. However, it is not necessary to establish whether Velleman is bound to this wider claim to engage with his position in the context of normativity in particular. It might be the case that Velleman's wider stance on the nature of objectivity, and his epistemic theory in general, is untenable - but, whether or not this is the case, my aim is to establish that scalar deontology is compatible with the foundational claims of his theory.

ourselves must constitute ourselves intelligibly because of the way subjects such as ourselves are constituted. While there is nothing necessary in any absolute sense about the way subjects such as ourselves are constituted the question only makes sense at all if asked within the scope of such subjects (or we are asking an entirely different question and that different question must, according to Velleman, assume a different type of subject anyway). So, the questions that we ask about norms are, because of the nature of normative questions, questions about what *human creatures such as ourselves* should do.

Scalar deontology is compatible with Velleman's model of normativity and the objectivity of answers to normative questions because the same approach that Velleman took to adopting the Kantian strategy into his Kinda Kantian strategy can be taken with the foundations of scalar deontology. Korsgaard's constitutivist theory is compatible with scalar deontology because the same necessary element of the perspective of the subject that she argues is the source of normativity is also the source of the scalar nature of our obligation to ourselves. Velleman also argues that particular elements of this perspective is the source of normativity, but he does not argue that the elements in question are necessary and, to match this change into a Kinda Kantian strategy, the same claim can be made about the elements of the perspective of the subject that is the source of the scalar nature of our obligation to ourselves. So, because scalar deontology comes from those same elements of ourselves (the perspective of the subject engaged in practical reason) it remains compatible with Velleman's Kinda Kantian strategy because the element that he alters from the Kantian strategy is the same element that is the source of scalar deontology. That is to say, the same alterations Velleman makes to the Kantian foundations in order to establish his relativist theory of objective normativity can also be made (and in the same manner) to the foundational claims of scalar deontology because the scalar nature of our obligation to ourselves is derived from the nature of exercising practical reason (which is the same place Velleman derives the objectivity of norms from). So, in the context of Velleman's Kinda Kantian constitutivism scalar deontology becomes relativist, while being objectivist in the relevant frame of reference, just like Velleman's normative theory.

My argument for scalar deontology is that our obligation to ourselves, our duty to constitute ourselves properly, is scalar when understood in the context of a subject using their practical reason. In the case of Korsgaard's constitutivism this means that our obligation to ourselves is derived from the same necessary element of our constitution as normativity. The necessity of that element of our constitution is an element of Korsgaard's (and Kant's) theory. The point of my argument for scalar deontology is not that this element of our constitution is necessary, rather, the point is that it is *the same element* that normativity itself is derived from and needs to be understood in the same context. That is to say, our obligation is scalar because our understanding of our own project of self constitution is scalar when it is understood in the context of a subject undertaking that project by using their practical reason. So, in the context of Velleman's theory, where the element of our constitution that normativity is derived from is not necessary, the same argument for scalar deontology works even though the necessity of the element of our constitution that is the source of normativity is no longer present. Regardless of whether this element of our constitution is necessary, my argument is that scalar deontology is

derived from *the same element understood in the same context* as normativity itself. Hence, scalar deontology is compatible with Kantian constitutivism even when that Kantian constitutivism is altered, by Velleman, into Kinda Kantian constitutivism (by altering the nature of objectivity in question).

To summarise, and ensure the clarity of my point, I can restate Velleman's argument to ensure the clarity of my point, by restating Velleman's argument that the frame of reference for normativity is our nature, so that it includes scalar deontology. Velleman argues that questions must contain the criteria for a correct answer and that normative questions provide elements of our own nature as this criteria. Our nature is provided as these criteria because, according to Velleman's constitutivism, that nature is the frame of reference within which normative questions are asked. His point is that when we ask normative questions we are asking about what *we as people with a particular type of nature* (and in specific contexts) should do and this is why providing an answer to normative questions that are true in the context of that nature (our constitution) is the appropriate method of answering normative questions. So, because normative questions are about the actions of people it is appropriate to utilise the constitution of people to answer them; that is to say, the answer is relative to our nature because the question is relative to our nature. Velleman's argument is that our nature provides the frame of reference for normativity and, therefore, it is the source of normativity. My argument is that our nature provides the frame of reference for scalar deontology and, therefore, the scalar nature of our obligation to ourselves is derived from the same source as constitutivism derives normativity from. Restated to include both of these arguments as one claim it becomes: our nature provides the frame of reference for normativity and the scalar nature of our obligation to ourselves and, therefore, it is the source of normativity and the scalar qualities of normativity. Notice that Velleman's argument, that normativity is derived from our nature, is already committed to the claim that our nature determines the qualities of normativity, because it posits that normativity as such is derived from our nature and that the source of normativity determines what norms are true and what it means for a norm to be true. My argument for scalar deontology is not altering the foundational claims of Velleman's theory, it is merely pointing out that deriving normativity from how we are constituted (our nature) entails that our obligation to ourselves is scalar because that is what follows from the same elements of our constitution that Velleman is already asserting as the frame of reference for normative questions. In the context of Velleman's theory our nature provides the frame of reference for *both* scalar deontology and norms in general.

3.9 Formulating the categorical imperative and scalar deontology

Scalar deontology describes how you understand the aims of your actions from the same position that you understand your freedom. It explains why your obligation to yourself, the obligation to constitute yourself coherently with the deepest elements of your nature, is something you can pursue and fulfill to a greater or lesser extent.⁷⁶ Like freedom itself this does *not* entail the claim that the scalar quality of normativity is understandable in all contexts, rather it explains the particular sense in which it does make sense to describe your duty, your obligation to yourself, as scalar. To explain the point in relation to Kantian moral theory, scalar deontology is a formulation of the categorical imperative; that is to say, it is an explanation of the qualities of the overriding obligation of reason. Like other formulations of the categorical imperative, scalar deontology explains what this obligation looks like in a particular context and is compatible with other formulations that explain what it looks like in different contexts.

Kant (1785/2011) explains that categorical imperatives are possible because the nature of freedom requires that we regard ourselves as bound to the laws of our understanding:

All my actions as only a member of the world of understanding would therefore conform perfectly with the principle of autonomy of the pure will; as only a part of the world of sense they would have to be taken to conform wholly to the natural law of desires and inclinations, hence to the heteronomy of nature. (The former would rest on the supreme principle of morality, the latter on that of happiness.) But because *the world of understanding contains the ground of the world of sense and so too of its laws*, and is therefore immediately lawgiving with respect to my will (which belongs wholly to the world of understanding) and must accordingly also be thought as such, it follows that I shall cognize myself as intelligence, though on the other side as a being belonging to the world of sense, as nevertheless subject to the law of the world of understanding, that is, of reason, which contains in the idea of freedom the law of the world of understanding, and thus cognize myself as subject to the autonomy of the will; consequently the laws of the world of understanding must be regarded as imperatives for me, and actions in conformity with these as duties. (4:454)

The argument, as Kant explains, is that our freedom is our ability to legislate our own laws according to the laws of reason (understanding) and so, because our freedom comes from reason, we are bound to obey the laws of reason. The idea is that when the laws of reason apply to the decisions we make, by using our practical reason in the position of a subject that is making a decision, they are categorical because *the nature of the faculty that is making the decision binds that faculty to the laws of reason*. The laws of reason are categorical because they *always* apply when utilising our freedom because they *are* our freedom; that is to say, we are free *because* we are bound to the laws of reason. This is crucial in understanding why the categorical imperative has different formulations when understood in different contexts, because the categorical imperative is the explanation of what the laws of reason are binding us to do in

⁷⁶ Kantian's should read 'deepest elements of your nature' as referring to the necessary elements of your nature while kinda kantians should read this as those elements of your nature that make you human. Both groups should read this as referring to those same elements of our constitution that normativity is derived from.

the context in question. The categorical imperative is the demand of coherence: the obligation that we have to be coherent because it is a fundamental demand of reason. This is why Korsgaard and Velleman present their constitutivist theories as coherence and intelligibility, they are both, at their core, extensions of the categorical requirement of coherence.

It might help to think of freedom as describing what we are free from rather than what we are bound by. Understanding it in this manner explains why our duty is both the law that binds us and the reason we are free. We are *not* free from reason, because using our mental faculties to reason about anything binds us to the laws of reason (in particular - the demand of coherence) because we must obey those laws in order to be reasoning. But we *are* free from our decisions being determined by other elements of our constitution (Kant describes this as the part of our nature determined by the natural law). Except, of course, we are not actually free from being determined by other elements of our constitution because the decisions we make can be explained, externally, by the psychology and other causal factors in play in the making of that decision. Rather, the point is that *from the position of the subject that is engaged in exercising their freedom* they undertake that process of decision making *as though they are free from their decision being determined* by anything except their own will; they must engage in their reasoning as though it is not yet determined, because having control is a feature of the activity of making a decision. So, because freedom itself is bound to this particular perspective the categorical imperative is too. The laws of reason both bind us to our obligation to them and make us free from other elements of our nature, but this description is *only* accurate when describing the perspective of a subject making a decision.

Kant (1785/2011) develops this point by arguing that it is freedom which binds us to our duty, the categorical imperative, by committing us to the rules of reason at the same time that it places us in the world of understanding instead of the world of sense:

And so categorical imperatives are possible by this: that the idea of freedom makes me a member of an intelligible world and consequently, if I were only this, all my actions *would* always be in conformity with the autonomy of the will; but since at the same time I intuit myself as a member of the world of sense, they *ought* to be in conformity with it[.] (4:454)

Kant's point is that the laws of reason become an obligation, something you ought to do rather than something you always do, because the position of the subject requires being in both the world of sense and the world of understanding at the same time. We are simultaneously creatures of reason that can understand the world in an abstract manner and creatures bound to the dictates of our desires and other elements of our psychology.

It is this same position of being in both the world of sense and the world of understanding that explains the scalar quality of our obligation. Of course, our obligation is in a sense absolute: that is, in the sense that it is categorical that we always ought to fulfil it absolutely. But in the position of the subject who is engaged in the ongoing project of their own self constitution our obligation is something that we can pursue and fulfil to varying levels of success. Our duty takes on this quality because the obligation we have is an ongoing project that involves the construction of

the deepest element of our own identity. We are, according to Kantian constitutivism, constituting ourselves when we exercise our freedom, by engaging in the activity of decision making, and by doing so we are altering elements of what we are, which is a process that takes place gradually over time. So, from the perspective of the subject engaged in the activity of self constitution (decision making), fulfilling our obligation is not something that happens in one particular instance and which we succeed or fail at, it is something that takes place over time and involves multiple decisions all of which contribute to the extent to which we are failing or succeeding at doing our duty. It is this perspective that scalar deontology describes - it describes how you understand the aims of your actions from the same position that you understand your freedom.

Notice that this means the scalar nature of your obligation can only be understood from the same position that you can understand your own freedom (that is, the same position in which your freedom exists). Scalar deontology describes how you understand the aims of your action from the same position that you understand your freedom. In this position, according to Kantian constitutivism, the categorical imperative is formulated as your obligation to constitute yourself coherently or intelligibly. It is also in this position that understanding your constitution as something you are in control of means understanding your scalar nature, which means, to understand yourself and your constitution as an ongoing project, to fulfil your obligation to yourself, that can be furthered to a greater or lesser extent by the particular decisions you make. Your ongoing pursuit of the categorical imperative, your own constitution, is the extent to which you can be more or less coherently constituted - because you can be pursuing that goal more or less successfully.

Formulated without reference to your ongoing aim of self constitution the categorical imperative does not appear scalar because when your obligation is applied to a particular problem, in isolation, the solution is not scalar. When, for example, determining what law one should prescribe in any particular case the solution is that one should prescribe the law that one would have others follow in relevantly similar cases. When formulated like this, as the formula of universal law, the categorical imperative depicts your obligation to be coherent as an obligation to act as you would have others act and applies it to the particular decision being made. It is not scalar in the sense that there is one answer, do what you would have everyone do, because that is what is coherent in the sense that it is what treating yourself as the same as other agents requires. However, when considering what you should do in the context of self constitution the decision does become scalar because what you ought to do is determined by the effect it has on the constitution of the subject in question. Notice that your obligation to do as you would have others do has not changed. It is still the case that you should legislate your own action in the same manner that you would have others legislate their actions, but the situation under consideration has changed by taking on a new element. The new element of consideration is the impact of the decision on the agent in question, specifically on their constitution, and this element exists because of the control of the self (the constitution of their deepest identity) that the subject has. This control exists in the form of freedom and, for that reason, must be

understood from the position of a subject who is making a decision (that is - constituting themselves).

In §§ 3.0-3.8, and in this section (§ 3.9), I have developed and clarified my argument for scalar deontology alongside an analysis which demonstrates that core elements of Velleman and Korsgaard's Kantian constitutivist theories are compatible with scalar deontology. In summary, I have clarified why the theories of freedom put forward by Velleman, Korsgaard, and Kant entail scalar deontology. In doing so I have defended scalar deontology by identifying that understanding our obligation to our own self constitution entails a formulation of the categorical imperative that can be understood from the same perspective that is required to understand freedom. The argument for scalar deontology is that formulating the categorical imperative so that it can be understood in the context of a subject who is undertaking the ongoing activity of self constitution entails that our obligation to ourselves is scalar. Normativity is derived from our autonomy in the sense that our autonomy is derived from the same necessary elements of our constitution that Kantian constitutivists use as the foundations for their constitutivist approach. As Korsgaard, Velleman, and Kant argue our autonomy is found in the control over our own decisions and actions provided to us by our faculty of reason. Because of its use of reason this control obligates us to be coherent and that obligation is formalised as the formulations of the categorical imperative. Because the categorical imperative is derived from our autonomy it must be capable of being formulated in the same context that is required in order to understand our autonomy: one's understanding of one's autonomy and the categorical imperative must be compatible because one is derived from the other. Formulating the categorical imperative in the context in which our control over our own actions can be understood requires a formulation in the context of a subject who is engaged in the activity of attempting to constitute themselves coherently. In this context the pursuit of coherence is an ongoing pursuit that is not something one has entirely succeeded or failed at, rather it is something that one is attempting to pursue more or less successfully: in this sense our obligation to be coherent is scalar.

Section 4: Conclusion

4.0 Overview of thesis

In this thesis I defended the claim that Kantian constitutivism can derive objective normativity from necessary elements of the constitution of agency or action, and demonstrated that the constitutivist approach can be utilised to provide new developments in the Kantian moral tradition. I demonstrate that Kantian constitutivism can establish objective normativity by solving the shmagency problem for Christine Korsgaard's and David Velleman's Kantian constitutivist theories. I do this by developing a reply to the shmagency problem in defence of Velleman's theory without deviating from the roots of the Kantian tradition and deriving a reply to the shmagency problem from Korsgaard's solution to a different critique of her theory. I demonstrate the ability of Kantian constitutivism to advance the Kantian tradition by utilising the constitutivist approach in conjunction with the Kantian strategy to develop a new formulation of the categorical imperative that facilitates a scalar deontology.

In the concluding sections that follow I synthesise and summarise key elements of my arguments and conclusions from throughout this thesis. In § 4.1 explain why Kantian constitutivism is able to solve the shmagency problem by deferring it to the Kantian tradition. Kantian claims about the nature of objectivity justify the constitutivist approach of deriving objective normativity from the constitution of agency provided the constitutive elements utilised for this purpose are necessary for rational understanding of the world. This means that the shmagency problem is a critique of the Kantian tradition rather than a critique of the constitutivist approach as such. In § 4.2 I explain why the Kantian tradition is able to justify crucial claims utilised by Kantian constitutivists to derive normativity from the constitution of agency. Our rational faculties are necessary for both understanding the world and explaining our role in it. Reason enables us to develop a conceptual understanding of the world and to control the decisions we make and the actions we take. This is how reason is both the source of fundamental epistemic claims regarding the nature of knowledge (and our role in the creation of our experience of the world) and the source of our autonomy. Because autonomy is used to derive normativity, by Kantian constitutivists and in traditional Kantian moral theory, the constitutive elements of the self utilised by Kantian constitutivists are the same elements of the subject utilised by the Kantian tradition to establish key metaphysical and epistemic claims. In § 4.3 I explain how Kantian constitutivism facilitates the development of scalar deontology. Kantian constitutivism derives normativity from what is constitutive of agency and this requires understanding our autonomy. Understanding autonomy can only be done from the perspective of a subject that is using their faculty of reason to control the decisions they make and the actions they take. From this perspective, agency has the ongoing aim of self-constitution (making oneself coherent or intelligible to oneself). Formulating the categorical imperative as this ongoing aim facilitates the development of a scalar deontology by establishing that our obligation to be coherent is an aim we are in constant pursuit of whenever we exercise our agency. When formulated as an aim we are in ongoing pursuit of, coherence is something we are achieving to a greater or lesser degree rather than something we have succeeded or failed at accomplishing.

4.1 Solving the shmagency problem and Kantian constitutivism

Kantian constitutivism solves the shmagency problem by referring to the metaphysical and epistemic claims of the Kantian tradition. This is accomplished by explaining that the necessity of agency entails that we must endorse the normativity that follows from agency. In §§ 1 and 2, I demonstrate that Kantian constitutivism can solve the shmagency problem by appealing to the necessity of agency. Necessary elements of agency establish the objectivity of normativity on the grounds of a transcendental deduction. This transcendental deduction establishes the objectivity of normativity by deriving it from necessary elements of our cognitive faculties. The necessity of these elements of our cognitive faculties is suitable grounding for the objectivity of normativity because if our cognitive faculties are necessary, then everything entailed by those faculties is also necessary. Kantian constitutivism solves the shmagency problem by pointing out that we *must* be agents, which entails that we must also endorse the normativity that is derived from agency.

As I explain in §§ 1.6 and 2.7, Kantian constitutivism establishes the necessity of endorsing the normativity that is derived from agency by arguing that the nature of the necessity of agency is such that not endorsing agency is nonsensical. Kantian constitutivism argues that you must endorse your rational faculties in order to make any knowledge claims at all and endorsing those rational faculties entails an endorsement of the normativity derived from them. Remember that by “rational faculties” I refer to our ability to reason in a manner that allows us to understand the world. In this manner, as I explain in §§ 1.7, 1.8, 2.5, and 2.7, the shmagency problem is deferred to the Kantian underpinnings of Kantian constitutivism. The argument is that we are required in an epistemic sense to be agents and that requirement entails that we must endorse the normativity derived from agency. Hence, the Kantian constitutivist reply to the shmagency problem can be synthesized as: endorsing one’s rational faculties is a necessary prerequisite to engaging in rational deliberation, discussion, and the pursuit of knowledge, and, hence, one must endorse those rational faculties and whatever is entailed by those faculties.

Explaining why the Kantian constitutivist argument is a transcendental argument exposes how the shmagency problem can be solved by deferring its critique to a critique of the Kantian claims underpinning Kantian constitutivism. This is a transcendental argument, as I explain in §§ 0.2 and 2.1, because it establishes the conclusion by deducing it from an established element of our experience of the world. The established element of our experience of the world is our rational faculties and the conclusion is normativity. By “established element” I mean an element of our experience of the world that is, in its own right, an accepted fact. The accepted fact about our experience of the world that is used to establish normativity, according to Kantian constitutivism, is the necessity of the elements of our rational faculties that entail normativity. So, our experience of the world establishes the claim that we must endorse our rational faculties in order to engage in the activity of reasoning at all (which, in turn, is required to make knowledge claims or undertake reflective deliberation) and those rational faculties entail normativity, as I explain in §§ 0.2, 1.2, 2.1, 3.2, and 3.3. In this manner, Kantian constitutivists have derived normativity from an element of what we provide to the process of experience creation, our rational faculties, and, hence, have transcended the apparent limits of experience by deriving

normativity from this element of experience. By “transcended the apparent limits of experience” I mean that Kantian constitutivism’s derivation of normativity from elements of our rational faculties, that are themselves established from how we construct our experience of the world, is a method of establishing a claim on grounds that might not appear suitable until the transcendental argument has been brought to bear.

Notice that putting forward a transcendental argument means that the shmagency problem has now been deferred to the basis of the transcendental argument rather than solved. This is how Kantian constitutivism ‘solves’ the shmagency problem by relying on the Kantian underpinnings to demonstrate that the constitutivist approach has not added any new problems to the Kantian moral project. As I explain in §§ 0.5, 1.1, and 2.2, the shmagency problem critique asks Kantian constitutivists why we ought to endorse agency at all.⁷⁷ Kantian constitutivism’s reply is that you must endorse agency in order to be rational at all because endorsing agency is how you endorse necessary elements of your rational faculties (at least, you must endorse agency insofar as doing so means endorsing these necessary elements of your rational faculties, as I explain in §§ 1.6 and 2.7). This raises the question, as explained in §§ 1.7, 2.5, and 2.7, of why we must endorse our necessary rational faculties. In this sense the shmagency problem has not been answered because the question ‘why be an agent?’ is still on the table. What has happened is that the Kantian constitutivist has explained that their argument is a transcendental argument, which means that the question ‘why endorse agency?’ is answered with ‘because endorsing agency is entailed by our necessary rational faculties’ and that answer leads to the question ‘why endorse those necessary rational faculties?’. The reply to this final question is ‘because endorsing those necessary rational faculties is a prerequisite to rational deliberation’. Notice that this final reply is not a reply from Kantian constitutivism at all! Rather, it is a defense of the claim that the necessity of our rational faculties can be derived from our role in the construction of our experience of the world. By appealing to the necessity of agency to reply to the shmagency problem, Kantian constitutivists have appealed to the Kantian underpinnings of their theory.

The resolution of the shmagency problem for Kantian constitutivism is that the shmagency problem never targeted Kantian constitutivism, as such, in the first place: rather, it targeted the Kantian tradition more broadly understood. Kantian constitutivism begins with the endorsement

⁷⁷ The shmagency problem applies to constitutivism broadly understood, not just Kantian constitutivists. However, here I am only referring to the shmagency problem as it applies to Kantian constitutivism because this is a synthesis of my findings on Kantian constitutivism and the shmagency problem. For an explanation of why the shmagency problem has difficulties applying to constitutivism broadly understood see §§ 1.4, 1.5, and 1.8 where I explain that Enoch has a different understanding of what objectivity means than Velleman. The difficulty of applying the shmagency problem to constitutivism broadly understood is that it is not clear that the constitutivist approach is an attempt to establish objective normativity at all. The shmagency problem is a critique of constitutivism’s ability to deliver objective normativity which means that the problem is simply not an issue for any constitutivist that is not attempting to deliver this type of conclusion. This is why, in § 1.8, I conclude that the shmagency problem debate between Velleman and Enoch results in the two philosophers having clarified what they mean by “objectivity” rather than either of them having disproven the others position - they simply meant different things by “objectivity”.

of agency as already established and derives objective normativity in that context. I synthesise my findings about what this reveals of the relationship between Kantian constitutivism and the Kantian tradition in § 4.2. By deferring the shmagency problem to a critique of the Kantian underpinnings of Kantian constitutivism, the constitutivist approach itself, deriving normativity from what is constitutive of agency, is absolved of Enoch's claim that it cannot deliver objective normativity. This is the result of the defence of Kantian constitutivism, from the shmagency problem, that I develop in §§ 1.6 and 2.7. The defence is a qualified defence in the sense that it has deferred the problem to the Kantian tradition rather than remove it completely. It is successful in the sense that it establishes that in the context of the Kantian tradition Kantian constitutivism does not introduce any new problems. The challenge of establishing that endorsing our rational faculties is necessary is not a new issue for the Kantian tradition: providing these foundations is the purpose of Kant's transcendental aesthetic. The success of my solution to the shmagency problem is that I have demonstrated that Enoch's critique is a skepticism of the foundations of the Kantian tradition rather than an issue with constitutivism in particular.

4.2 Kantian constitutivism and the Kantian tradition

Kantian constitutivism solves the shmagency problem by deferring it to the epistemic and metaphysical claims made by the Kantian tradition. The process of developing this reply to the shmagency problem required exploring the nature of Kantian constitutivism's use of the Kantian tradition. This demonstrated that any problems found in the foundations of the Kantian approach to philosophy, the transcendental approach, risk undermining Kantian constitutivism. It also revealed that the constitutivist derivation of normativity from agency places autonomy in a subtly different context than traditional Kantian moral philosophy and this difference allows for the development of scalar deontology, which I explain in § 3. The relationship between Kantian constitutivism and the Kantian tradition provides both the solution to the shmagency problem and the foundations for developing a scalar deontology.

This relationship between Kantian constitutivism and the Kantian tradition is found both in how Kantian constitutivism establishes the objectivity of the normativity it derives from the constitution of agency and in the role of autonomy in establishing this normativity. In §§ 0.3, 0.4, 1.6, 2.1, 3.1, and 3.3 I explain that deriving objective normativity from how we are constituted is accomplished, by Kantian constitutivists, by appealing to the epistemic and metaphysical claims of the Kantian tradition. This is the relationship I refer to in my synthesis of my results regarding Kantian constitutivism and the shmagency problem in § 4.1. The normativity derived from the constitution of agency by Kantian constitutivism is objective normativity because the elements of our constitution that it is derived from are themselves objective. As I explain in § 0.3, and develop in §§ 2.1 and 3.1, objectivity in this context refers to the necessity of the proposition in question. The elements of our constitution that Kantian constitutivism derives normativity from are objective in the sense that those elements are necessary.

In §§ 3.1 and 3.3 I explain that the derivation of normativity from necessary elements of our constitution is how Kantian constitutivism develops on Kant's transcendental approach to philosophy. This approach uses the necessity of our faculty of reason to establish the objectivity of the normativity derived from the constitution of agency. By establishing the objectivity of the normativity derived from our constitution with this type of transcendental argument (see §§ 2.1 and 3.3) Kantian constitutivism demonstrates that it can deliver objective normativity: thus, solving the shmagency problem. I explain in §§ 1.4 and 1.5 that Velleman does not solve the shmagency problem in this manner and by doing so deviates from core tenets of the Kantian tradition. This is why, as I explain in § 1.8, Velleman does not attempt to establish objective normativity in the same sense that the shmagency problem is dealt in. This is why, as I explain in § 3.3, Velleman's constitutivism is only 'Kinda Kantian'. In § 1.5 I explain that Velleman's constitutivism foregoes the Kantian sense of objectivity, which derives objectivity from the necessity of elements of our constitution, because Velleman does not argue that the elements of our constitution that normativity is derived from are necessary (at least, not in the same sense that the Kantian tradition does). In § 1.6 I explain how important elements of Velleman's constitutivist theory can be preserved as a fully fledged form of Kantian constitutivism by providing an alternative reply to the shmagency problem that does appeal to the same type of objectivity that the Kantian tradition deals in.

The element of our constitution that is necessary, and the element that Kantian constitutivism derives normativity from, is our faculty of reason. I explain why this element of our constitution is the focus of Kantian constitutivism's derivation of normativity in §§ 0.4, 1.6, 2.7, and 3.5. The idea is that our faculty of reason is necessary in the special sense that it is required to understand the world and this entails that we must endorse our faculty of reason in order to undertake rational deliberation and, hence, we must endorse our faculty of reason in order to endorse anything at all. That's the Kantian claim utilised by Kantian constitutivists and they then develop this by deriving normativity from the same elements of our constitution. By developing on this claim with the constitutivist approach (see §§ 0.2 and 3.2) Kantian constitutivists provide their claim with the same type of objectivity the Kantian tradition establishes for reason itself. So, the link between Kantian constitutivism and the Kantian tradition is that the Kantian tradition establishes the necessity, and therefore objectivity, of our rational faculties and Kantian constitutivism then derives normativity from those same faculties.

So, this relationship between the necessity of our rational faculties and the derivation of normativity from them reveals how Kantian constitutivism establishes the objectivity of normativity. It also reveals how the role of autonomy in Kantian constitutivism is related to its underlying Kantian claims. In §§ 3.7 and 3.8 I explain the relationship between Kant's theory of autonomy and freedom and those developed by Korsgaard and Velleman alongside their Kantian constitutivist theories. The relationship is that autonomy is also derived from our rational faculties and in this manner the nature of freedom (as the use of our autonomy) and normativity is fundamentally linked in both the Kantian tradition and Kantian constitutivism.

Kant, Korsgaard, and Velleman explain the nature of autonomy and freedom in different ways but with a common claim (see §§ 3.7 and 3.8) that entails a particular assertion about the nature of normativity. The underlying claim about freedom and autonomy is that our autonomy is the result of our ability to control our own decisions and actions, our freedom is the exercising of that control. The assertion that this claim entails about the nature of autonomy is that our obligation to act in a particular way, our duty, is an obligation to ourselves that arises from the control we have over our own decisions and actions (see §§ 3.3 and 3.9). We have the ability to control our own decisions and actions because we provide the faculty of reason to the process of decision making and this faculty of reason is the use of the laws of reason to become the cause of our decisions and actions (see §§ 3.4 and 3.5). The role of our faculty of reason in becoming this cause obligates us to act and make decisions in a particular way because of the laws that govern this faculty. The laws of reason entail that we are obligated to be coherent, because without being coherent we would not be following the laws of reason at all: in this sense coherency is fundamental to the use of our rational faculties. From this obligation the categorical imperatives, the laws of normativity and morality as such, are derived (see § 3.9). Hence, our obligation to what follows from the nature of our rational faculties is also our obligation to morality: our control over our own actions is provided by our faculty of reason and the faculty of reason requires that we are coherent - this requirement that we are coherent is our obligation to ourselves and it entails the categorical imperative.

Our rational faculties provide us control over our own decisions and actions in the sense that they provide laws that we can use to direct the process of making decisions and taking action. This is why Korsgaard identifies our rational faculties with our deepest personal identity, which she describes as practical identity (see § 3.7). In this sense our freedom comes from acting in accordance with the laws of reason and, hence, we are free insofar as we do so. Notice that, according to this Kantian account of autonomy, freedom is compatible with determinism because freedom is found within a law governed domain - reason. This is how our autonomy and normativity arise from the same Kantian claim about the nature of knowledge and our access to it. Reason itself is necessary and we derive its necessity from what we provide to the creation of our experience of the world. Reason is also how we control our own actions and the decisions we make: it is how our will is free. Hence, the necessity of reason translates into the necessity of our autonomy (see § 3.8 where I explain why Velleman describes this as a type of epistemic freedom).

In § 3.9 I explain that Kantian moral philosophy derives our obligation to be coherent in the form of the categorical imperative (in all of its formulations). The idea is that the requirement that we are coherent entails that we treat other people as the equals of ourselves (in a particular sense) because to do otherwise would not be coherent. Hence, placing value on my own life requires that I place value on the lives of others because coherence demands this. Coherence demands this because I am, after all, no different from others in regards to why I think my own life has value: I think I am valuable because I experience and participate in the world and therefore I must value others because they also experience and participate in the world. This line of reasoning is developed into the categorical imperatives in their various formulations. I should act as I would have others act in similar situations because I am not relevantly different from others (universal law). I should participate in society in the same manner as I would have others do because I am a member of the society in the same sense they are (kingdom of ends). I should treat other people as ends in their own right because I treat myself in this manner and they are an end in the same sense that I am (value of humanity and treating people as ends). These formulations of the categorical imperative are formulations of the demands of our own rational faculties and, hence, they are an obligation placed upon us by the fundamental nature of what we are. In § 4.3 I explain how this obligation relates to my development of a scalar deontology as a formulation of the categorical imperative that demonstrates one of the prospects for the Kantian tradition that is facilitated by the employment of the constitutivist approach.

Deriving the categorical imperative from the obligation of coherence placed upon us by our rational faculties is how the Kantian tradition and Kantian constitutivism are fundamentally connected. Our reason obligates us to acknowledge the necessity of endorsing our own faculty of reason in order to understand the world. Endorsing these faculties entails an obligation to be coherent in our use of them, because of the laws that those faculties provide. This obligation to be coherent underwrites all uses of our faculty of reason and, hence, its imperatives are categorical. This is how the formulations of the categorical imperative in Kantian moral theory

are derived from our rational faculties and it is the same process that Kantian constitutivism utilises to derive normativity from the constitution of agency.

4.3 Scalar deontology and the prospects of Kantian constitutivism

Scalar deontology is a formulation of the categorical imperative that demonstrates the prospects provided to the Kantian tradition by the constitutivist approach. As I explain in §§ 3.0 and 3.4 scalar deontology refers to the obligation we have to ourselves to act coherently and explains why that obligation is scalar in nature. In § 3.9 I explain that because scalar deontology is derived from our obligation to be coherent it is a formulation of the categorical imperative. This formulation of the categorical imperative shows that our obligation to be coherent is an obligation that we have to ourselves. This obligation exists from the same perspective that our control over own decisions and actions exists: the perspective of an agent that is in the process of making a decision by utilising their rational faculties (see §§ 3.7 and 3.8). From this perspective our obligation to be coherent is something that we are in a constant state of pursuing because it is always the underlying aim of our rational faculties in the sense that when reasoning we are trying to be coherent (see §§ 3.5 and 3.6). In the perspective of a subject that is exercising their rational faculties to control their decisions and actions the obligation to be coherent is not something that they either complete or fail at. This obligation is an ongoing pursuit that they are achieving more or less well and, hence, is a scalar obligation.

Our rational faculties provide us with both control over our actions and an obligation to use that control in a coherent manner. As I summarize in § 4.2 this is how reason is simultaneously the source of our autonomy (our ability to control our own actions and decisions) and our moral obligations. This is how Kantian constitutivists establish the objectivity of normativity by deriving it from the objectivity of reason. This link between objectivity and normativity is provided by the Kantian tradition. The constitutivist approach, as I explain in §§ 3.3 and 3.5, provides an examination of the role of the subject in the derivation of normativity from the constitution of agency. Normativity is derived from autonomy, in both the Kantian tradition and for Kantian constitutivists (see §§ 3.5, 3.6, and 3.7), and the constitutivist approach provides an examination of what that means for the role of the subject regarding the source of normativity. Normativity is derived from the constitution of the subject, in particular the constitution of their agency, and this means that the categorical imperative must be capable of being formulated in the same context that the constitution of the subject needs to be understood within (see § 3.6). Understanding our autonomy requires understanding the position of the subject that is in the process of exercising their autonomy and formulating the categorical imperative in this context requires a formulation that expresses the categorical imperative as an ongoing aim. Formulating the categorical imperative as an ongoing aim underlying the use of our faculty of reason is how I develop scalar deontology (see § 3.5).

As I explain in §§ 3.6, 3.7, and 3.8 understanding autonomy requires the context of a subject that is exercising that autonomy. Korsgaard explains this requirement to understand autonomy in the context of a subject that is exercising that autonomy in terms of the existence of freedom (see § 3.7). She argues that freedom exists in the sense that a subject that is utilising their faculty of reason to make a decision becomes the cause of their decision or action. Velleman describes this requirement as epistemic freedom which means that the control over our own decisions and actions granted by our rational faculties provides us with license to understand and discuss our own actions as though they are not predetermined (see § 3.8). I think either of

these explanations is a suitable development of Kant's theory of freedom (see §§ 3.6, 3.7, 3.8, and 3.9). I explain this requirement as the necessity of understanding the context of the subject in the role of autonomy and its place the derivation of normativity (see §3.5). These claims about the role of autonomy in the constitutivist derivation of normativity can be synthesised as the assertion that understanding our autonomy and understanding the nature of normativity must be compatible. We must be able to do both in the same context because normativity requires autonomy. Hence, because autonomy must be understood in the context of the subject that utilising its faculty of reason to control its decisions and actions normativity must be formulated such that can be understood in that context too.

In §§ 3.5, 3.6, and 3.9 I demonstrate that formulating normativity such that it can be understood in the context of a subject exercising its faculty of reason to control its own decisions (autonomy) facilitates the development of a scalar deontology. In the context of a subject that is exercising its autonomy agency is something with an underlying aim that the subject is in the ongoing pursuit of. This aim is the aim of self-constitution identified by Kantian constitutivists (see §§ 1.2 and 3.8 for Velleman's explanation of this aim and §§ 2.1 and 3.7 for Korsgaard's). The ongoing pursuit of this aim is the obligation placed upon us by our faculties of reason and, hence, pursuit of this aim is the categorical imperative (see § 3.9). Formulating this aim, the categorical imperative, in this context means formulating it as an ongoing pursuit because agency itself is, in this context, an ongoing pursuit. This is how the categorical imperative is formulated as the ongoing pursuit of coherence. As an ongoing pursuit of coherence success and failure at the aim of the pursuit is understood as the extent to which the agent is succeeding or failing to constitute themselves coherently: this is why the obligation is scalar (see §§ 3.5, 3.6 and 3.9). Understanding the purpose of your agency as the ongoing aim of self-constitution entails understanding your success in that pursuit as something you are in the process of accomplishing, to a greater or lesser efficacy, rather than understanding it as something you have either failed or succeeded at.

Notice that the constitutivist approach was the crucial element which allowed the formulation of the categorical imperative as a scalar obligation to oneself in § 3.9. The focus on the role of the subject and its constitutive features prompted an examination of the foundations of normativity which involved both the Kantian tradition and the constitutivist approach. The key observation that facilitated the development of this argument was the role of the subject in the context of the ongoing activity of agency. The ongoing activity of agency is the activity of self-constitution and it is the constitutivist approach that identified the need to focus on this point. This is how Kantian constitutivism, rather than the Kantian tradition or the constitutivist approach in either of their own right, allowed the development of scalar deontology. This appreciation of the role of the subject is the prospect for continued contributions from the constitutivist approach to the Kantian tradition.

4.4 Parting thoughts and thanks

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